



**RESOURCE
MANAGEMENT AGENCY
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One

PETE VANDER POEL
District Two

PHILLIP A. COX
District Three

J. STEVEN WORTHLEY
District Four

MIKE ENNIS
District Five

AGENDA DATE: September 24, 2013

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>

CONTACT PERSON: Celeste Perez PHONE: 559-624-7010

SUBJECT: Award an Agreement for Planning and Transportation Consultant Services for the Matheny Tract Transportation Infrastructure Plan

REQUEST(S):

That the Board of Supervisors:

1. Approve an Agreement in an amount not to exceed \$103,034 with Omni-Means, Ltd Engineers & Planners for Consultant Services for the Matheny Tract Transportation Infrastructure Plan.
2. Authorize the Chairman to execute the Agreement.

SUMMARY:

On August 15, 2012, the Tulare County Association of Governments (TCAG) was awarded an Environmental Justice Transportation Planning grant (2012-13) by the California Department of Transportation for the purpose of funding the Matheny Tract Transportation Infrastructure Plan. Essentially, this plan is intended to provide the opportunity to identify, prioritize and recommend ways to meet this community's needs involving transportation infrastructure and utilities.

On May 21, 2013, the Board of Supervisors approved an agreement with TCAG indicating that Tulare County Resource Management Agency (RMA) would provide project management services for this grant. As indicated in the application, RMA is the sub-applicant for the grant.

As also indicated in the agreement, RMA would procure a consultant to prepare the plan. Accordingly, on July 5, 2013, the County released a Request for Proposal (RFP) for a Planning and Transportation Consultant.

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DATE: September 24, 2013

In response, the County received four responses to the RFP. All proposals were independently reviewed and scored by TCAG and RMA staff. The proposals were rated based on comprehension of the project, thoroughness of the proposal, qualification and experience of the firm, project delivery time, and references. Follow up interviews were held with the three firms that received the highest combined rating from the first review. During the interview each firm was given the opportunity to make a presentation and was asked a number of standardized questions.

TCAG and RMA staff independently rated each firm whereupon staff assigned a numeric score to each firm's proposal. These scores were then combined, with the result that Omni-Means, Ltd., Engineers & Planners received the highest score both in the initial review and in the follow up interviews. A summary of these scores is provided in Attachment "A".

Based on these results, staff recommends that the County award the Matheny Tract Transportation Infrastructure Plan consulting contract to Omni-Means Ltd., Engineers & Planners. The proposed Agreement is contained in Attachment "B".

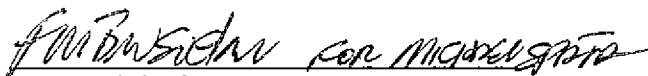
FISCAL IMPACT/FINANCING:

The Matheny Tract Transportation Infrastructure Plan is funded by California Department of Transportation 2012-13 Environmental Justice Transportation Planning grant awarded to Tulare County Association of Governments. On May 21, 2013, the Board of Supervisors approved the local cash requirement of \$3,450 to be paid from budget No. 001-230-4501. There is no County cost to the General Fund.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five-year strategic plan includes the Safety and Security initiative to provide for the safety and security of the public. The proposed grant activities will continue to improve the Safety and Security by defining options to improve pedestrian and vehicular movement throughout the community.

ADMINISTRATIVE SIGN-OFF:



Michael C. Spata
Assistant Director - Planning

Cc: Auditor-Controller
County Counsel
County Administrative Office (2)

Attachment "A" – Summary of Consultant Scores
Attachment "B" – Consultant Agreement

IN THE MATTER OF AWARDED AN)
 AGREEMENT FOR PLANNING AND) Resolution No. _____
 TRANSPORTATION CONSULTANT) Agreement No. _____
 SERVICES FOR THE MATHENY TRACT)
 TRANSPORTATION INFRASTRUCTURE)
 PLAN)

1. Approved an Agreement in an amount not to exceed \$103,034 with Omni-Means, Ltd Engineers & Planners for Consultant Services for the Matheny Tract Transportation Infrastructure Plan.
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Attachment “A”

Summary of Consultant Scores

Request for Proposals - Scoring Summary
Matheny Tract Transportation Infrastructure Plan
Caltrans Environmental Justice Planning Grant

CRITERIA		Max Points	Herron Consultants	Dyett & Bratton Urban & Regional Planners	VRPA Technologies, Inc.	Omini-Means Engineers & Planners
1	The Proposal					
	- Comprehension of the Project	20	15	16	16	20
	- Thoroughness of Proposal	80	68	71	73	77
	- Meeting the Request for Proposal Objectives	80	60	72	71	79
	- Project Delivery Time	40	37	37	40	38
2	Consultant Qualifications					
	- Qualifications and Experience	100	71	96	94	97
	- References					
	- Disadvantage Business Enterprise Participation Level					
3	Cost	20	20	19	19	17
	Totals	340	271	311	313	328

Comments/Notes:

Attachment “B”

Omni-Means, Ltd Engineers & Planners Consultant Agreement

**AGREEMENT
CONSULTANT SERVICES
Matheny Transportation Infrastructure Plan**

I. INTRODUCTION

THIS AGREEMENT is entered into as of September 24, 2013, between the COUNTY OF TULARE, referred to as COUNTY, and OMNI-MEANS, Ltd. Engineers & Planners, referred to as CONSULTANT, with reference to the following:

II. RECITALS

A. WHEREAS, the Tulare County Association of Governments (TCAG) has entered into Agreement Number 74A0677, referred to as AGREEMENT, attached as **EXHIBIT A**, to receive funding from the State of California, Department of Transportation, referred to as CALTRANS, to finance the Matheny Transportation Infrastructure Plan; and to assist Tulare County Association of Governments in the implementation of the grant they received from the State of California, Department of Transportation, referred to as CALTRANS, to finance a Matheny Transportation & Community Plan, referred to as PLAN; and

B. WHEREAS, the County of Tulare has entered into Agreement Number 26073 with TCAG, attached as **EXHIBIT B**, to assist Tulare County Association of Governments in the implementation of their CALTRANS grant; and

C. WHEREAS, all requirements of Agreements 74A0677 and 26073 are included herein and incorporated by reference; and

D. WHEREAS, the COUNTY released a "Request for Proposals" (RFP), for the Matheny Transportation Infrastructure Plan, inviting qualified consultants to submit a detailed proposal outlining how they would accomplish specified tasks described in the SCOPE OF WORK, attached as **EXHIBIT C**. CONSULTANT responded with a detailed work plan and cost proposal; and

E. WHEREAS, the COUNTY wishes to enter into a professional services contract with the CONSULTANT to develop a plan to address transportation and community needs in the community of Matheny Tract; and

ACCORDINGLY, IT IS AGREED:

III. SPECIFIC TERMS

1. TERM: This Agreement shall become effective upon the execution of this Agreement by the Tulare County Board of Supervisors and shall expire February 28, 2015 or the latest amendment of the closeout date thereto, unless otherwise terminated as provided in this Agreement.

2. SERVICES TO BE PERFORMED:

- a. For the PLAN, CONSULTANT agrees to provide professional services in accordance with the SCOPE OF WORK and the Project Timeline, attached as **EXHIBIT D**, and will be compensated by the COUNTY as outlined below in Paragraph 3, PAYMENT FOR SERVICES.
- b. COUNTY will provide administration services for the PLAN and will:
 - i. Provide to CONSULTANT access to information and data in connection with this project upon request, including, but not limited to, pertinent maps, reports, legal information, improvement standards, rights-of-way, restrictions and easements.
 - ii. Oversee outreach activities coordinated by the CONSULTANT, with the help of California Rural Legal Assistance Foundation and the Matheny Tract Committee.
 - iii. Schedule and plan stakeholder meetings and presentation meetings to the County Board of Supervisors and be available and responsive to assist participants and partners on this project to ensure satisfactory and realistic results.

3. PAYMENT FOR SERVICES:

- a. CONSULTANT agrees to be compensated for professional services for the PLAN in an amount not to exceed \$103,034 for satisfactory completion of tasks and activities of the PLAN as detailed in the SCOPE OF WORK and the Project Timeline. This compensation shall include all expenses which CONSULTANT, its employees, its subconsultants and/or subcontractors may incur in providing the services for the PLAN.
- b. CONSULTANT shall submit invoices to the COUNTY monthly.
- c. Invoices shall include the following information:
 - i. Names of CONSULTANT personnel performing work
 - ii. Time period covered by the invoice
 - iii. All costs shall be itemized by task as shown in the scope of work, including identification of each employee or subcontractor staff that provided services during the period of the invoice, the number of hours and hourly rates for each employee or subcontractor staff member, authorized travel expenses with receipts, receipts for authorized materials or supplies, and subcontractor invoices.
 - iv. CONSULTANT shall submit written progress reports with each invoice to allow the COUNTY to determine if the CONSULTANT is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.
 - v. Payment shall be made in accordance with the normal payment cycle of the COUNTY, and COUNTY shall endeavor to see that payment is made within thirty (30) days following approval of an invoice by the Resource Management Agency Assistant Director – Planning.

IV. GENERAL TERMS

4. INDEPENDENT CONTRACTOR STATUS:

- a. This Agreement is entered into by both parties with the express understanding that CONSULTANT will perform all services required under this Agreement as an independent

contractor. Nothing in this Agreement shall be construed to constitute the CONSULTANT or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

- b. CONSULTANT agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONSULTANT shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONSULTANT as to how the services will be performed. As CONSULTANT is not COUNTY'S employee, CONSULTANT is responsible for paying all required state and federal taxes. In particular, COUNTY will not:
 - i. Withhold FICA (Social Security) from CONSULTANT'S payments.
 - ii. Make state or federal unemployment insurance contributions on CONSULTANT'S behalf.
 - iii. Withhold state or federal income tax from payments to CONSULTANT.
 - iv. Make disability insurance contributions on behalf of CONSULTANT.
 - v. Obtain unemployment compensation insurance on behalf of CONSULTANT.
 - c. Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONSULTANT to assure compliance with this Agreement.
5. **PERFORMANCE REQUIREMENTS:** CONSULTANT shall be held to the same goals, milestones, performance measurements, laws, regulations, and requirements as the COUNTY as reflected in Agreement No. 74A0677 and 26073, attached hereto as Exhibit A and B, and outlined in the SCOPE OF WORK, attached hereto as Exhibit C.
6. **COMPLIANCE WITH LAW:** CONSULTANT shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONSULTANT'S employees, CONSULTANT shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
7. **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.
8. **RECORDS AND AUDIT:** CONSULTANT shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONSULTANT shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONSULTANT shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing

and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

9. **MONITORING:** COUNTY will monitor CONSULTANT during the term of this Agreement for compliance with any or all applicable requirements as outlined in the SCOPE OF WORK.

10. CONFLICT OF INTEREST:

- a. CONSULTANT agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONSULTANT for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONSULTANT or any business firm in which CONSULTANT has an interest, with certain narrow exceptions.
- b. CONSULTANT agrees that if any facts come to its attention which raises any questions as to the applicability of conflicts of interest laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

11. **INSURANCE:** Prior to approval of this Agreement by COUNTY, CONSULTANT shall file with the submitting department evidence of required insurance as set forth in **EXHIBIT E** attached. Insurance policies shall not be used to limit CONSULTANT'S liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

12. **INDEMNIFICATION:** To the full extent permitted by law, CONSULTANT shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance of this Agreement due to the negligence, recklessness, or willful misconduct of CONSULTANT or its agents, officers and employees. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONSULTANT under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONSULTANT'S failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

13. TERMINATION:

- a. Without Cause: County will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. County will pay to the CONSULTANT the compensation earned for work performed and not previously paid for to the date of termination. County will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONSULTANT of any and all plans, specifications and estimates, and other documents prepared by CONSULTANT in accordance with this Agreement. No sanctions will be imposed.
- b. With Cause: This Agreement may be terminated by either party should the other party:
 - i. be adjudged a bankrupt, or
 - ii. become insolvent or have a receiver appointed, or
 - iii. make a general assignment for the benefit of creditors, or
 - iv. suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
 - v. Materially breach this Agreement

In addition, COUNTY may terminate this Agreement based on:

- vi. material misrepresentation, either by CONSULTANT or anyone acting on CONSULTANT's behalf, as to any matter related in any way to COUNTY's retention of CONSULTANT, or
- vii. other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONSULTANT to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

County will pay to the CONSULTANT the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONSULTANT of any and all plans, specifications and estimates, and other documents prepared by CONSULTANT by the date of termination in accordance with this Agreement. County will not pay lost anticipated profits or other economic loss, nor will the County pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONSULTANT's scope of work exceeds the unpaid balance of the agreement, the CONSULTANT must pay the difference to the County. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

- c. Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONSULTANT's services have been terminated

by the County, said termination will not affect any rights of the County to recover damages against the CONSULTANT.

- d. **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONSULTANT's services are to be performed, may immediately suspend performance by CONSULTANT, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONSULTANT to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

14. LIQUIDATED DAMAGES: The parties agree that time is of the essence regarding completion of the project pursuant to this Agreement. If the project is not completed according to the SCOPE OF WORK and the Project Timeline, this delay will constitute a breach of contract by CONSULTANT. Such breach will cause a hardship upon COUNTY and there will be extreme difficulty and uncertainty in fixing the actual damages to COUNTY at the time of such breach. "Actual damages" from CONSULTANT's breach of project completion date include but are not limited to monetary damages, COUNTY'S loss of good will or credibility with other parties COUNTY contracts with, and future loss of funding to COUNTY. The parties hereby agree to reasonable liquidated damages based on the circumstances existing at the time this Agreement is entered into. As such, if CONSULTANT breaches the promise to complete the project in accordance with the SCOPE OF WORK and the Project Timeline, then CONSULTANT must pay the sum of \$1,000 per calendar day of delayed completion to COUNTY as reasonable liquidated damages. The parties do not consider these amounts to be penalties. The parties agree that the liquidated damages set forth in this Section do not include damages sustained by COUNTY as a result of COUNTY paying excess of the cost of this Agreement when COUNTY terminates pursuant to Section 13, "TERMINATION," and finishes the scope of work. If COUNTY Terminates in accordance with Section 13, "TERMINATION," and finishes the scope of work, CONSULTANT will pay COUNTY the cost to complete the scope of work that exceeds the cost of this Agreement, in addition to any liquidated damages for delayed project completion set forth in this section.

COUNTY will deduct liquidated damages determined by this Section from any retention or amount due to CONSULTANT pursuant to this Agreement, and will bill CONSULTANT for any liquidated damages in excess of retention or amounts due to CONSULTANT. CONSULTANT will pay COUNTY within thirty (30) days of receiving a bill for liquidated damages.

If COUNTY partially causes the delay of CONSULTANT'S completion of the project pursuant to this agreement, the liquidated damages owed by CONSULTANT will not include days of delayed completion caused by COUNTY. The COUNTY Resource Management Agency Director may choose to grant CONSULTANT extensions of time for the number of days of delayed completion caused by COUNTY.

Liquidated damages will not be assessed against CONSULTANT when the delay in completion of the work is due to unforeseeable cause beyond the control and without the fault or negligence of the CONSULTANT.

In the event this liquidated damages clause is not upheld, COUNTY may seek actual damages for delayed completion caused by CONSULTANT. Notwithstanding the breach of project completion date addressed in this Section COUNTY may recover actual damages for any other breaches of this Agreement by CONSULTANT.

15. LOSS OF FUNDING: It is understood and agreed that if the funding is either discontinued or reduced for this project for the COUNTY, that the COUNTY shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least fourteen (14) days prior written notice of such termination.

16. FORM DE-542: If CONSULTANT is an individual, CONSULTANT acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONSULTANT's full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONSULTANT agrees to cooperate with COUNTY to make such information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY's option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

17. NOTICES:

- a. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Michael C. Spata, Assistant Director
Assistant Director
5961 South Mooney Blvd.
Visalia, CA 93277
Phone No.: 559-624-7000
Fax No.: 559-730-2653

With A Copy To:

Laurie Mercer, Manager
Grants & Development Branch
5961 South Mooney Blvd.
Visalia, CA 93277
Phone No.: 559-624-7000
Fax No.: 559-730-2653

CONSULTANT:

H. Ross Ainsworth, P.E., T.E.
President/Principal-in-Charge
OMNI-MEANS, Ltd. Engineers & Planners
309 West Main Street, Suite 100
Visalia, CA 93291
Phone No.: 559-734-5895
Fax No.: 559-734-5899

- b. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

- 18. ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, experience and expertise of CONSULTANT and CONSULTANT'S employees and no part of this Agreement may be assigned or subcontracted by CONSULTANT without the prior written consent of COUNTY.
- 19. DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties; otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.
- 20. FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.
- 21. CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.
- 22. HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.
- 23. NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
- 24. WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.
- 25. EXHIBITS AND RECITALS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
- 26. HIERARCHY:** in the case of a conflict of terms or provisions between this Consultant Agreement and any of the documents referenced above, the following shall serve as an order of precedence from most controlling document to the least controlling document:
- a. This document (excluding exhibits);
 - b. Insurance Requirements (Exhibit E);
 - c. Fund Transfer Agreement No. 07A0677 (Exhibit A);
 - d. Scope of Work (Exhibit C);
 - e. Project Timeline (Exhibit D)

If a conflict exists, the non-conflicting portion(s) of the term or provision of the less controlling documents shall remain enforceable.

27. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

28. PROFESSIONAL MANNER: CONSULTANT shall provide the services contemplated by the agreement in a professional manner and quality satisfactory to the COUNTY.

29. DOCUMENT OWNERSHIP: All finished or unfinished documents, data, studies, computer programs, methodological explanations, surveys, models, photographs, and reports prepared by CONSULTANT under this Agreement shall be considered the property of the COUNTY. Upon completion of the services to be performed or upon the termination of the Agreement, these materials shall be turned over to the COUNTY, provided that in any case CONSULTANT may, at no additional expense to the COUNTY, make and retain copies thereof as it desires. CONSULTANT further agrees to keep those materials, which may not be public records under the laws of the State of California confidential.

30. ENTIRE AGREEMENT REPRESENTED: This Agreement represents the entire agreement between CONSULTANT and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

31. ASSURANCES OF NON-DISCRIMINATION: CONSULTANT shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

- a. It is recognized that both the CONSULTANT and the COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONSULTANT agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The COUNTY, in its sole discretion, has the right to require CONSULTANT to replace any employee who provides services of any kind to the COUNTY pursuant to this Agreement with other employees where the COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude the COUNTY from terminating this Agreement with or without cause as provided for herein.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date: _____

BY _____
Chairman, Board of Supervisors

ATTEST: JEAN ROUSSEAU
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

CONSULTANT

Date: 9.6.13

By H. Rousseau
TITLE PRESIDENT

Date: 09/06/13

By Joe W. Zell
TITLE ASSISTANT SECRETARY

Note: Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Approved as to Form
County Counsel

By Z. W. Zell
Deputy Matter No: 20/31357

Date 9/9/13

EXHIBIT A
AGREEMENT NO. 74A0677

TULARE COUNTY ASSOCIATION OF GOVERNMENTS
AGREEMENT WITH STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION

FUND TRANSFER AGREEMENT

THIS FUND TRANSFER AGREEMENT (FTA), between the State of California acting by and through its Department of Transportation, referred to herein as CALTRANS and the Tulare County Association of Governments, hereinafter referred to as AGENCY, will commence on January 2, 2013, or approval by CALTRANS, whichever occurs later. This FTA is of no effect unless approved by CALTRANS. Agency shall not receive payment for work performed prior to approval of the FTA and before receipt of Notice to Proceed by the CALTRANS Contract Manager. This FTA shall expire on February 28, 2015.

RECITALS

1. Under this FTA, CALTRANS is conveying State grant funds to AGENCY, pursuant to Budget Act Line Item 2660-102-0042T, who will conduct transportation studies and planning within the regional area under the jurisdiction of AGENCY.
2. AGENCY has agreed to implement Matheny Tract Transportation Infrastructure Plan, hereinafter the Project, subject to the terms and conditions of this FTA. The Scope of Work and Project Timeline are attached hereto as Attachment II.
3. TCAG's Resolution authorizing AGENCY to execute this FTA pertaining to the above described Project is attached hereto as Attachment I.
4. All services performed by AGENCY pursuant to this FTA are intended to be performed in accordance with all applicable State and AGENCY laws, ordinances, regulations, and CALTRANS published manuals, policies, and procedures. In case of conflict between State and AGENCY laws, ordinances, or regulations, the order of precedence applicability of these laws shall be State and AGENCY laws and regulations respectively.
5. Project funding is as follows:

<u>FUND TITLE</u>	<u>FUND SOURCE</u>	<u>DOLLAR AMOUNT</u>
SHA	State	\$114,300.00

6. This FTA is exempt from legal review and approval by the Department of General Services, pursuant to Public Contract Code Section 10295.

SECTION I

AGENCY AGREES:

To timely and satisfactorily complete all Project Work described in Attachment II within the project budget and in accordance with the terms of this FTA.

SECTION II

IT IS MUTUALLY AGREED:

In consideration of the foregoing and the mutual promises of the parties hereto, AGENCY and CALTRANS agree as follows:

1. Notification of Parties

- A. AGENCY's Project Manager is Christine Chavez, (559) 623-0452.
- B. CALTRANS' Contract Manager is Alec Kimmel, (559) 488-4325.
- C. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and received by the parties at their respective addresses:

Tulare County Association of Governments
Attention: Christine Chavez, Project Manager
210 North Church Street, Suite B
Visalia, CA 93291

California Department of Transportation
District 6 – Transportation Planning
Attention: Alec Kimmel, Contract Manager
1352 West Olive Avenue
Fresno, CA 93778

2. Period of Performance

- A. Reimbursable work under this FTA shall begin no earlier than on **January 2, 2013**, contingent upon the approval by CALTRANS and receipt of the Notice to Proceed letter of this FTA by the CALTRANS Contract Manager, and will expire on **February 28, 2015**.
- B. AGENCY will attend a kickoff meeting with CALTRANS to be scheduled within one (1) week from receipt of Notice to Proceed letter by the CALTRANS Contract Manager.

3. Changes in Terms/Amendments

This FTA may only be amended during the period of performance by mutual written agreement of the parties signed by the signatories or their successors.

4. Cost Limitation

- A. The total amount reimbursable to AGENCY pursuant to this FTA by CALTRANS shall not exceed **\$114,300.00**.
- B. It is agreed and understood that this FTA fund limit is an estimate and that CALTRANS will only reimburse the cost of services actually rendered as authorized by the CALTRANS Contract Manager at or below that fund limitation established hereinabove.

5. Termination

- A. CALTRANS reserves the right to terminate this FTA upon written notice to AGENCY at least thirty (30) days in advance of the effective date of such termination in the event AGENCY fails to proceed with PROJECT work in accordance with the terms of this FTA.
- B. In the event of termination for convenience, CALTRANS will reimburse AGENCY for all allowable, authorized costs up to the date of termination.
- C. AGENCY has sixty (60) days after the Termination Date to submit invoices to CALTRANS to make final allowable payments for Project costs in accordance to the terms of this FTA.

6. Budget Contingency Clause

- A. It is mutually agreed that if the U.S. Congress or the State Legislature fail to appropriate or allocate funds during the current year and/or any subsequent years covered under this FTA does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, CALTRANS shall have no liability to pay any funds whatsoever to AGENCY or to furnish any other considerations under this Agreement and AGENCY shall not be obligated to perform any provisions of this FTA.
- B. If funding for any fiscal year is reduced or deleted by the U.S. Congress or the State Legislature for purposes of this program, CALTRANS shall have the option to either terminate this Agreement with no liability occurring to CALTRANS, or offer a FTA Amendment to AGENCY to reflect the reduced amount.

7. Payment and Invoicing

- A. The method of payment for this FTA will be based on actual allowable costs. CALTRANS will reimburse AGENCY for expended actual allowable direct costs and including, but not limited to labor costs, travel, and contracted consultant services costs incurred by AGENCY in performance of the Project work. Indirect costs are reimbursable only if the AGENCY has an approved Indirect Cost Allocation Plan or an Indirect Cost Rate Proposal as set forth in Section II - Cost Principals, Item 9. d. The total cost shall not exceed the cost reimbursement limitation set forth in Section II - Cost Limitations, Item 4. a. Actual costs shall not exceed the estimated wage rates, labor costs, travel and other estimated costs and fees set forth in Attachment II without an amendment to this FTA, as agreed between CALTRANS and AGENCY.
- B. Reimbursement of AGENCY expenditures will be authorized only for those allowable costs actually incurred by AGENCY in the performance of the Project work. AGENCY must not only have incurred the expenditures on or after the start date and the issuance of the Notice to Proceed letter for this FTA and before the Expiration Date, but must have also paid for those costs to claim any reimbursement.
- C. Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates were not then commercially available to AGENCY, its sub-recipients, contractors, and/or subcontractors, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process at the following link: http://www.dot.ca.gov/hq/asc/travel/ap_b/bu1.htm

- D. AGENCY submits invoices to CALTRANS at least quarterly but no more frequently than monthly in arrears for completion of milestones in accordance with the Project Timeline in Attachment II to the satisfaction of the CALTRANS' Contract Manager. Invoices shall reference this FTA Number and shall be signed and submitted to the CALTRANS' Contract Manager at the following address, as stated in Section II - Notification of Parties, Item 1. c.
- E. Invoices shall include the following information:
- 1) Names of the AGENCY personnel performing work
 - 2) Dates and times of project work
 - 3) Locations of project work
 - 4) Itemized costs as set forth in Attachment II, including identification of each employee or subcontractor staff that provided services during the period of the invoice, the number of hours and hourly rates for each employee or subcontractor staff member, authorized travel expenses with receipts, receipts for authorized materials or supplies, and subcontractor invoices.
 - 5) AGENCY shall submit written progress reports with each set of invoices to allow the CALTRANS' Contract Manager to determine if AGENCY is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.
- F. Incomplete or inaccurate invoices shall be returned to the AGENCY unapproved for correction.
- G. CALTRANS will reimburse AGENCY for all allowable Project costs at least quarterly but no more frequently than monthly in arrears as promptly as CALTRANS fiscal procedures permit upon receipt of an itemized signed invoice.
- H. The FTA Expiration Date refers to the last date for AGENCY to incur valid Project costs or credits and is the date the FTA expires. AGENCY has sixty (60) days after that Expiration Date to make final allowable payments to Project contractors or vendors, submit the Project's Final Product(s) as defined in Attachment II and final invoice to CALTRANS for reimbursement for allowable Project costs. Any unexpended Project funds not invoiced by the sixtieth (60th) day will be reverted and will no longer be accessible to reimburse late Project invoices.

8. Local Match Funds

- A. Except where expressly allowed in writing herein, reimbursement of credits for local matching funds will be made or allowed only for work performed on and after the date of issuance of the Notice to Proceed and prior to the Expiration Date of this FTA.

- B. AGENCY agrees to contribute the statutorily required local contribution of matching funds if any is specified within this FTA or in any Attachment hereto, toward the actual cost of the services described in Attachment II. AGENCY shall contribute not less than its required match amount toward the services described herein. Local cash and in-kind match requirements can be found in the Environmental Justice and Community-Based Transportation Planning Handbook located at the Office of Community Planning website: http://www.dot.ca.gov/hq/tpp/offices/ocp/ej_cbtp_toolbox.html

9. Cost Principles

- A. AGENCY agrees to comply with Title 2, Code of Federal Regulations (CFR), Part 225 (formerly Office of Management and Budget Circular A-87), Cost Principles for State, Local and Tribal Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- B. AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual Project cost items and (b) all parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving Project funds as a sub-recipient, contractor, or subcontractor under this FTA shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any Project costs for which AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 48 CFR, Chapter 1, Part 31 or 49 CFR, Part 18, are subject to repayment by AGENCY to CALTRANS. Should AGENCY fail to reimburse moneys due CALTRANS within thirty (30) days of discovery or demand, or within such other period as may be agreed in writing between the parties hereto, CALTRANS is authorized to intercept and withhold future payments due AGENCY from CALTRANS or any third-party source, including, but not limited to, the State Treasurer, the State Controller or any other fund source.
- D. Prior to AGENCY seeking reimbursement of indirect costs, AGENCY must prepare and submit annually to CALTRANS an Indirect Cost Allocation Plan or an Indirect Cost Rate Proposal in accordance with 2 CFR, Part 225 and Local Assistance Procedures Manual (LPP 04-10).

10. Americans with Disabilities Act

By signing this FTA, AGENCY assures CALTRANS that in the course of performing Project work, it will fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

11. Indemnification

Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by AGENCY, its officers, employees, agents or its subcontractors under or in connection with any work, authority or jurisdiction conferred upon AGENCY under this FTA. It is understood and agreed that AGENCY, its officers, employees, agents, or subcontractors shall fully defend, indemnify and save harmless CALTRANS and all its officers and employees from all claims, suits or actions of every name, kind and description occurring by reason of anything done or omitted to be done by AGENCY, its officers, employees, agents or subcontractors under this FTA.

12. Non-Discrimination

A. During the performance of this FTA, AGENCY and all of its sub-recipients and its sub-contractors, if any, shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family and medical care leave, and denial of pregnancy disability leave. AGENCY, its subcontractors, and sub-recipients shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. AGENCY, its subcontractors and sub-recipients shall comply with the provisions of the Fair Employment and Housing Act (Government Code [GC] Section 12900 et seq.) and the applicable regulations promulgated hereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing GC Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this FTA by this reference and are made a part hereof as if set forth in full. AGENCY, its subcontractors, and sub-recipients shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other collective bargaining agreements in place.

B. AGENCY shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this FTA.

13. Retention of Records/Audits

- A. AGENCY, its contractors, subcontractors and sub-recipients shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line. The accounting system of AGENCY, its contractors, all subcontractors, and sub-recipients shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of AGENCY, its contractors, subcontractors and sub-recipients connected with Project performance under this FTA shall be maintained for a minimum of three (3) years from the date of final payment to AGENCY and shall be held open to inspection, copying, and audit by representatives of CALTRANS, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by AGENCY, its contractors, its subcontractors and sub-recipients upon receipt of any request made by CALTRANS or its agents. In conducting an audit of the costs and match credits claimed under this FTA, CALTRANS will rely to the maximum extent possible on any prior audit of AGENCY pursuant to the provisions of State and Agency law. In the absence of such an audit, any acceptable audit work performed by AGENCY'S external and internal auditors may be relied upon and used by CALTRANS when planning and conducting additional audits.
- B. For the purpose of determining compliance with applicable State and Agency law in connection with the performance of AGENCY'S contracts with third parties pursuant to GC Section 8546.7, AGENCY, AGENCY'S sub-recipients, contractors, subcontractors, and CALTRANS shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to AGENCY under this FTA. CALTRANS, the California State Auditor, or any duly authorized representative of CALTRANS or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and AGENCY shall furnish copies thereof if requested.
- C. AGENCY, its sub-recipients, contractors, and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other AGENCY of the State of California designated by CALTRANS, for the purpose of any investigation to ascertain compliance with this FTA.
- D. Additionally, all grants may be subject to a pre-award audit prior to execution of the FTA to ensure AGENCY has an adequate financial management system in place to accumulate and segregate reasonable, allowable and allocable costs.

14. Disputes

- A. Any dispute concerning a question of fact arising under this FTA that is not disposed of by agreement shall be decided by the CALTRANS Contract Officer, who may consider any written or verbal evidence submitted by AGENCY. The decision of the CALTRANS Contract Officer shall be the CALTRANS's final decision regarding the dispute.
- B. Neither the pendency of a dispute nor its consideration by the CALTRANS Contract Officer will excuse AGENCY from full and timely performance in accordance with the terms of the FTA.

15. Third-Party Contracts

- A. AGENCY shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without prior written authorization by CALTRANS Contract Manager unless expressly included (sub-recipient identified) in Attachment II as part of the identified Project work.
- B. AGENCY may use their procurement procedures as long as they comply with 49 CFR, Part §18.36 and Local Assistance Procedures Manual, Chapter 10. All government funded consultant procurement transactions must be conducted using a fair and competitive procurement process that is consistent with 49 CFR, Part §18.36.
- C. Any subcontract entered into as a result of this FTA shall contain all the provisions stipulated in this FTA to be applicable to AGENCY's sub-recipients, contractors, and subcontractors. Copies of all agreements with sub-recipients, contractors, and subcontractors must be submitted to the CALTRANS Contract Manager.
- D. CALTRANS does not have a contractual relationship with the AGENCY's sub-recipients, contractors, or subcontractors and the AGENCY shall be fully responsible for all work performed by its sub-recipients, contractors, or subcontractors.
- E. Prior authorization in writing by the CALTRANS Contract Manager shall be required before AGENCY enters into any non-budgeted purchase order or sub-agreement for supplies, or consultant services. AGENCY shall provide an evaluation of the necessity or desirability of incurring such costs.

- F. Any subcontract entered into by AGENCY as a result of this FTA shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors. Travel expenses and per diem rates for subcontractors shall be reimbursed pursuant to **Section II - Payments and Invoicing, Item 7. c.**

16. Drug-Free Workplace Certification

By signing this FTA, AGENCY hereby certifies under penalty of perjury under the laws of California that AGENCY will comply with the requirements of the Drug-Free Workplace Act of 1990 (GC Section 8350 et seq.) and will provide a Drug-Free workplace by doing all of the following:

- 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, as required by GC Section 8355(a).
- B. Establish a Drug-Free Awareness Program as required by GC Section 8355(b) to inform employees about all of the following:
 - 1) The dangers of drug abuse in the workplace.
 - 2) The person's or organization's policy of maintaining a Drug-Free workplace.
 - 3) Any available counseling, rehabilitation, and employee assistance programs.
 - 4) Penalties that may be imposed upon employees for drug abuse violations.
- C. Provide, as required by GC Section 8355(c), that every employee who works on the proposed contract or grant:
 - 1) Will receive a copy of the company's Drug-Free policy statement.
 - 2) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.

Failure to comply with these requirements may result in suspension of payments under this FTA or termination of this FTA or both, and AGENCY may be ineligible for the award of any future state contracts if CALTRANS determines that any of the following has occurred: (1) AGENCY has made a false certification or, (2) agency violates the certification by failing to carry out the requirements as noted above.

17. Relationship of Parties

It is expressly understood that this FTA is an Agreement executed by and between two (2) independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

18. State-Owned Data

A. AGENCY agrees to comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:

- 1) Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect CALTRANS data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.
- 2) Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.
- 3) Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.
- 4) Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.
- 5) Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
- 6) Notify the CALTRANS Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.
- 7) Advise the owner of the State-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.

B. AGENCY agrees to use the State-owned data only for State purposes under this FTA.

C. AGENCY agrees to not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). (State Administrative Manual (SAM) Section 5335.1.)

19. Project Close Out/Final Product

- A. AGENCY will provide four (4) copies and four (4) electronic versions of the Final Product(s) to the CALTRANS Contract Manager.
- B. CALTRANS reserves the right to withhold final payment to AGENCY pending receipt of Final Product(s) to the CALTRANS Contract Manager.

SECTION III

ATTACHMENTS:

The following attachments are incorporated into and are made a part of this FTA by this reference and attachment:

- I. AGENCY Resolution
II. Scope of Work and Project Timeline

IN WITNESS WHEREOF, the parties hereto have executed this FTA on the day and year first herein above written:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: *Robert Anderson*
Title: *Staff Services Manager I*
Date: *1/11/13*

TULARE COUNTY ASSOCIATION
OF GOVERNMENTS

By: *El Smaly*
Title: *Executive Director*
Date: *1/9/13*

By: *Carla Cruz*
Title: *Associate Regional Planner*
Date: *1/9/13*

By: _____
Title: _____
Date: _____

BEFORE THE
TULARE COUNTY ASSOCIATION OF GOVERNMENTS
COUNTY OF TULARE, STATE OF CALIFORNIA

In the matter of:

SUPPORT FOR A CALTRANS PLANNING)
GRANT APPLICATION AND AUTHORIZE) Resolution No. 12-027
THE EXECUTIVE DIRECTOR TO ENTER)
INTO A CONTRACT WITH CALTRANS)
UPON AWARD MATHENY TRACT COMMUNITY)
INFRASTRUCTURE PLAN)

WHEREAS, Caltrans provides transportation planning grants for meeting program-specific purposes intended to address local transportation related needs and issues; and

WHEREAS, Tulare County Association is eligible to receive Federal and/or State funding for certain transportation planning related plans, through the California Department of Transportation; and

WHEREAS, Tulare County Association of Governments supports the promotion of community involvement in planning to improve mobility, access, and safety while promoting economic opportunity, equity, environmental protection, and affordable housing for low-income, minority, and Native American communities; and

WHEREAS, the need to promote community involvement in planning to improve mobility, access, safety, economic opportunity, equity, environmental protection, and affordable housing in Matheny Tract exists; and

WHEREAS, the need exists to create an infrastructure plan for existing and future infrastructure needs for the community of Matheny Tract; and

WHEREAS, The 2013 Community Transportation Infrastructure Plan for the Matheny Tract would include an analysis of existing infrastructure needs. A strong component of community outreach and recommendations for infrastructure needs would be included; and

WHEREAS, The 2013 Community Transportation Infrastructure Plan for the Matheny Tract would identify capital and financial opportunities; and

WHEREAS, TCAG staff is submitting a Caltrans Planning grant for fiscal year 2012/13 to conduct a planning study to submit a grant application under the Environmental Justice Planning Grant category to assist in preparation of a community plan for the community of Matheny Tract; and

WHEREAS, The County of Tulare Planning will take the lead in the development or hiring of a consultant for the plan; and

WHEREAS the City of Tulare will participate in the plan and review all recommended infrastructure improvements; and

WHEREAS, a Fund Transfer Agreement is needed to be executed with the California Department of Transportation before such funds can be claimed through the Transportation Planning Grant Programs; and

WHEREAS, the Tulare County Association of Government wishes to delegate authorization to execute these agreements and any amendments thereto to the TCAG Executive Director; and

WHEREAS, if the grant is awarded, the Tulare County Association of Governments will contribute a minimum match of 7.5%-10% cash, and the County of Tulare will provide an in-kind match of no less than 3%. The total match contribution from TCAG and Tulare County would total \$12,700.00.

NOW, THEREFORE, BE IT RESOLVED AND DETERMINED, as follows:

1. The TCAG Board hereby authorizes the TCAG Executive Director to enter into a contract with Caltrans for execution of the transportation planning grants for the 2013 Community Transportation Plan for the Matheny Tract, if awarded.
2. TCAG to provide a 10% grant match for the 2012/13 planning grant if awarded.

The foregoing Resolution was adopted upon the motion of Member Vejvoda, seconded by Member Worthley, at a regular meeting on the 19th day of March 2012, by the following vote:

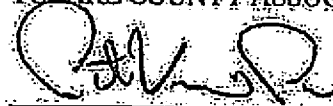
AYES: Ishida, Vander Poel, Worthley, Ennis, Hinesly, Allwardt, Boyer, Kimball, Irish, Vejvoda, Link, Sparks, Townsend

NOES: Cox

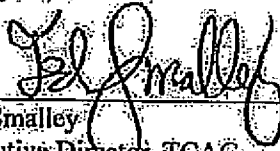
ABSTAIN:

ABSENT: Mendoza, McKittrick

TULARE COUNTY ASSOCIATION OF GOVERNMENTS



Pete Vander Poel
Chair, TCAG



Ted Smalley
Executive Director, TCAG

SCOPE OF WORK: Matheny Tract Transportation Infrastructure Plan

INTRODUCTION:

The Matheny Tract Community Transportation Improvement Plan provides a useful first step in developing plans that will allow for long-term sustainable improvements that address the significant infrastructure needs in Matheny Tract that revolve around increasing walkability and enhancing transportation. The Matheny Tract Committee, the local community group, will host community meetings so that the community residents themselves are active participants in identifying preexisting current conditions. Furthermore, at those community meetings, residents will also identify and recommend short-term improvement projects that will both align with the community's priorities of fostering sustainability, promoting a pedestrian-friendly environment, and enhancing transportation choices. Ultimately, the planning from this grant would facilitate the development of an improvement strategy plan that addresses existing deficits, identifies funding opportunities for long term sustainable improvements, and develops a timeline for improving substandard pedestrian and road conditions.

RESPONSIBLE PARTIES: Tulare County Association of Governments (TCAG), Tulare County, City of Tulare, California Rural Legal Assistance (CRLA), Matheny Tract Committee

OVERALL PROJECT OBJECTIVES:

The overall objectives are:

1. Conduct outreach and involve the community in determining transportation needs;
2. Prepare an Infrastructure report that includes existing conditions, recommendations, estimated costs, and financial opportunities;
3. Present the results to Tulare County Association of Governments, Tulare County Board of Supervisors, and the Tulare City Council

1. Project Initiation, Grant Management and Reporting

Task 1.1 – Project Kick-off Meeting

- Upon approval of a contract with Caltrans, TCAG and Tulare County will initiate a kick-off meeting to include Caltrans, TCAG, The County of Tulare, the City of Tulare, and other stakeholders as desired.
- Responsible Party: TCAG/Tulare County

Task 1.2 – Staff Coordination Meetings

- Bi-Monthly calls to check progress will be conducted by the Consultant or County of Tulare will be held. The goal of these meetings will be to ensure good communication and on schedule performance of upcoming tasks to keep the

project on time and within budget. Staff from CRLAF and Caltrans will be invited to the staff coordination meetings.

- Responsible Party: Tulare County/TCAG

Task 1.3 – Prepare Request for Proposals

- Tulare County staff will prepare a request for proposal (RFP) for bids from qualified consultants to prepare the Plan. The RFP will include a proposed timeline for completion of the project and pertinent budget information related to the project and grant.
- Responsible Party: Tulare County

Task 1.4 – Solicit bids from Qualified Consultants

- Tulare County staff will solicit bids from qualified consultants.
- Responsible Party: Tulare County

Task 1.5 – Evaluate Bids/Award Contract

- Tulare County staff and TCAG staff will evaluate and score the consultant proposals and make recommendations for awarding the contract to the best qualified consultant.
- Responsible Party: Tulare County

Task 1.6 – Prepare/Execute Agreement

- Tulare County staff will prepare the consultant agreement in accordance with Tulare County policies, and notify all bidders of the results of the proposal scoring and consultant selection results.
- Responsible Party: Tulare County

Task 1.7 – Quarterly Reporting and Invoicing to Caltrans

- TCAG staff will prepare and submit quarterly updates to Caltrans for this grant. An invoice will be submitted quarterly, or less frequently, as requested by Caltrans.
- Responsible Party: TCAG

Task	Deliverable
1.1	Meeting notes and attendance sheet
1.2	Monthly meeting notes
1.3	Copy of Request for Proposal, procurement procedures, signed consultant contract
1.4	List of bids received, copies of proposals
1.5	Consultant scores, resolution approving consultant

1.6	Copy of Executed Agreement
1.7	Quarterly reporting and invoicing

2. Field study and analysis

Task 2.1 – Background Data Analysis

- Consultant will identify current conditions by gathering background data. Opportunities and constraints will be used to guide preparation of the Plan including, but not limited to, existing land uses, population characteristics, and travel projections.
- Responsible Party: Consultant

Task 2.2 – Existing Conditions Report

- Using community resident input, consultant will complete an existing conditions report that will identify substandard pedestrian facilities, conditions that promote and provide for safe routes for pedestrian and bicyclist use, public transportation, and existing utility connections and infrastructure.
- Responsible Party: Consultant

Task 2.3 – Infrastructure Audit

- Consultant will visit Matheny Tract to get a better understanding of the existing infrastructure and opportunities in the community
- Responsible Party: Consultant

Task	Deliverable
2.1	Background data analysis
2.2	Existing conditions report
2.3	Infrastructure audit summary

3. Community Outreach

Task 3.1 – Initial Outreach to Community

- Consultant will coordinate outreach to community members. All meetings (Community Workshops #1-3) will be publicly announced through newspaper press releases, fliers, and through local community groups. In addition, Matheny Tract Committee will, with the help of CRLA, create and distribute flyers door-to-door to maximize attendance. All public notices will be in English and Spanish and Spanish/English translators will be present at Community Workshops #1-3.
- Through these three workshops community input will be gained regarding developing a transportation improvement strategy plan to explore current transportation options, improvement opportunities, priorities, and guiding new investments. Public input will be important for developing an analysis of

infrastructure needs and utility (electrical, gas, cable, telephone, broadband) needs.

- Responsible Party: Consultant, CRLA, Matheny Tract Committee

Task 3.2 – Community Workshop #1

- A workshop will be held at the local church or another community meeting location and consultant will present the scope of the plan, the results of the infrastructure audit, and ask for feedback to develop the existing conditions report.
- Responsible Party: Tulare County, Consultant

Task 3.3 – Community Workshop #2

- An interactive workshop will present the community with priorities and opportunities on transportation access improvements in the community. The community members will decide which are of greatest priority. A draft streetscape plan will be presented.
- Responsible Party: Tulare County, Consultant

Task 3.4 – Community Workshop #3

- An informative workshop will be held with community members and interested participants to present the street design analysis and Draft Matheny Tract Transportation Infrastructure Plan.
- Responsible Party: Tulare County, Consultant

Task	Deliverable
3.1	<i>Copies of flyers in Spanish and English, Contact list</i>
3.2	<i>Meeting Notes, Workshop Agenda/Summary, Photos</i>
3.3	<i>Meeting Notes, Workshop Agenda/Summary, Photos</i>
3.4	<i>Meeting Notes, Workshop Agenda/Summary, Photos</i>

4. Capital/Financial Needs Analysis

Task 4.1 - Background Data Analysis summary

- Background data and community outreach data collection will be used in the summary for the Plan.
- Responsible Party: Consultant

Task 4.2 – Existing conditions summary

- A summary of existing conditions from Task 2.2 will be incorporated into the Draft and Final Plan.
- Responsible Party: Consultant

Task 4.3 - Summary and Recommendations of Infrastructure Audit

- A summary of infrastructure improvements will be provided through analysis. The recommendations shall be prioritized to coincide with future improvements or funding opportunities.
- Responsible Party: Consultant

Task 4.4 – Estimated costs of infrastructure

- Preliminary costs will be analyzed to determine costs for infrastructure improvements.
- Responsible Party: Consultant

Task 4.5 – Financial opportunities/resources

- Consultant shall determine financial opportunities and resources for implementing the needed infrastructure in the community of the Matheny Tract. Consultant shall include Caltrans in the financial opportunities/resources matrix creation. These financial resources will be used as a guide for grant applications, funding allocations, and funding prioritization.
- Responsible Party: Consultant

Task	Deliverable
4.1	Background data analysis chapter in Plan
4.2	Existing conditions summary
4.3	Summary and recommendations of infrastructure audit
4.4	Infrastructure cost estimates
4.5	Financial opportunities/resources summary

5. Prepare the Matheny Tract 2013 Community Transportation Infrastructure Plan

Task 5.1 – Prepare a draft Plan

- The draft Plan shall incorporate existing conditions, background data, community input and needs, and capital/financial recommendations for infrastructure improvements. The draft plan will be subject to Caltrans review and approval.
- Responsible Party: Consultant

Task 5.2 – Present results of study to BOS and City of Tulare Council

- The draft Plan results will be presented before the Tulare County Board of Supervisors and Tulare City Council. Staff reports and copies of the presentation will be provided to Caltrans.
- Responsible Party: Tulare County, Consultant

Task 5.3 – Prepare a final Plan

- The consultant will prepare a final Plan based on feedback received during the draft Plan. The final Plan will be subject to Caltrans review and approval.
- Responsible Party: Consultant

Task 5.4 – Adopt the Final Plan

- The final Matheny Tract Community Transportation Plan will be adopted by the Tulare County Association of Governments, Tulare County Board of Supervisors, and the Tulare City Council.
- Responsible Party: Tulare County Association of Governments

Task	Deliverable
5.1	Draft Community Transportation Plan
5.2	Presentation, staff reports
5.3	Final Matheny Tract Community Transportation Plan
5.4	Resolution(s) adopting the final Plan

EXHIBIT B
AGREEMENT NO. 26073

TULARE COUNTY AGREEMENT WITH
TULARE COUNTY ASSOCIATION OF GOVERNMENTS

**AGREEMENT BETWEEN
TULARE COUNTY ASSOCIATION OF GOVERNMENTS
AND
COUNTY OF TULARE
FOR
SERVICES PERFORMED BY TULARE COUNTY ON THE
CALIFORNIA DEPARTMENT OF TRANSPORTATION
2012-13 ENVIRONMENTAL JUSTICE PLANNING GRANT
MATHENY TRACT INFRASTRUCTURE PLAN**

I. INTRODUCTION

THIS AGREEMENT is entered into as of April 11, 2013, between the TULARE COUNTY ASSOCIATION OF GOVERNMENTS, a Regional Transportation Planning Agency (hereinafter "TCAG") and the County of Tulare, a political subdivision of the State of California (hereinafter "COUNTY"), with reference to the following:

II. RECITALS

A. WHEREAS, TCAG has been awarded an Environmental Justice Planning Grant (hereinafter "Grant") through the California Department of Transportation in the amount of \$114,300 to conduct a planning study that will provide a needs assessment, understanding, and analysis of Matheny Tract's transportation infrastructure needs; and

B. WHEREAS, TCAG has requested the COUNTY to assist them in the implementation of this GRANT; and

C. WHEREAS, TCAG and the COUNTY find it mutually beneficial to enter into this Agreement for the purposes of establishing a covenant between the two parties in which the COUNTY will provide project management services and project oversight of the proposed work described in the SCOPE OF WORK, attached as Exhibit "A" and TCAG will reimburse the COUNTY for costs incurred as a result of the project management and project oversight activities. TCAG will perform grant management, all reporting and monitoring for the grant and be the liaison with Caltrans; and

D. WHEREAS, TCAG will reimburse the COUNTY as described in the BUDGET, attached as Exhibit "B"; and

E. WHEREAS, the parties therefore agree as to the services to be provided by the COUNTY and the procedures for payment by TCAG for those services.

ACCORDINGLY, IT IS AGREED:

III. SPECIFIC TERMS

TERM: This Agreement shall become effective as of April 4, 2013, and shall continue through February 28, 2015, or the expiration of the GRANT, unless otherwise terminated as provided in this Agreement.

1. **SERVICES TO BE PERFORMED AND PAYMENT FOR SERVICES:** (See EXHIBIT A and EXHIBIT B).

2. **INDEPENDENT CONTRACTOR STATUS:**

(a) This Agreement is entered into by both parties with the express understanding the COUNTY will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed as to constitute COUNTY or any of its agents, employees or officers as an agent, employee or officer of TCAG.

(b) COUNTY agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of TCAG. Subject to any performance criteria contained in this Agreement, COUNTY shall be solely responsible for determining the means and methods of performing the specified services and TCAG shall have no right to control or exercise any supervision over County as to how the services will be performed. As COUNTY is not TCAG's employee, COUNTY is responsible for paying all required state and federal taxes. In particular TCAG will not:

1. Withhold FICA (Social Security) from COUNTY payments.
2. Make state or federal unemployment insurance contributions on COUNTY's behalf.
3. Withhold state or federal income tax from payments to COUNTY.
4. Make disability insurance contributions on behalf of COUNTY.
5. Obtain unemployment compensation insurance on behalf of COUNTY.

(c) Notwithstanding this independent contractor relationship, TCAG shall have the right to monitor and evaluate the performance of COUNTY to assure compliance with this Agreement.

3. **COMPLIANCE WITH LAW:** COUNTY shall provide services in accordance with applicable Federal, State and local laws, regulations and directives. With respect to COUNTY employees, COUNTY shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, worker's compensation insurance, and discrimination in employment.

4. **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

5. **RECORDS AND AUDIT:** COUNTY shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, COUNTY shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, COUNTY shall make such records available within Tulare County to TCAG or its authorized representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

6. **CONFLICT OF INTEREST:**

(a) COUNTY agrees to, at all times during the performance of this Agreement, comply with the laws of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including COUNTY for this purpose, from making any decision on behalf of TCAG in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences and TCAG decision which has potential to confer any pecuniary benefit on COUNTY or any business firm in which COUNTY has an interest, with certain narrow exceptions.

(b) COUNTY agrees that if any facts come to their attentions which raise any questions as to the applicability of conflicts of interest laws, it will immediately inform the TCAG designated representative and provide all information needed for resolution of this question.

7. **INSURANCE:** TCAG acknowledges that COUNTY is self-insured.

8. **INDEMNIFICATION:** COUNTY shall hold harmless, defend and indemnify TCAG, its agents, officers, and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including TCAG property, arising from, or in connection with, negligence, willful acts of misconduct, or violations of the law by COUNTY or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against TCAG by any

taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against TCAG alleging civil rights violations by COUNTY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act). This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

TCAG shall likewise hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, negligence, willful acts of misconduct, or violations of the law by TCAG or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by TCAG under Government Code sections 12920 et seq. (California Fair Employment and Housing Act). This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

9. TERMINATION:

(a) Without Cause: TCAG and/or COUNTY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. TCAG will pay to COUNTY the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from COUNTY of any and all plans, specifications, and estimates, and other documents prepared by the COUNTY in accordance with this Agreement. No sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement; or
- (5) materially breach this Agreement.

In addition, TCAG may terminate this Agreement based upon:

- (6) material misrepresentation, either by COUNTY or anyone acting on COUNTY's behalf, as to any matter related in any way to TCAG's retention of COUNTY, or
- (7) other misconduct or circumstances which, in the sole discretion of TCAG, either impair the ability of COUNTY to competently provide the services under this Agreement, or expose TCAG to an unreasonable risk of liability.

TCAG will pay to COUNTY the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from COUNTY of any and all plans, specifications, and estimates, and other documents prepared by COUNTY by the date of termination in accordance with this Agreement. TCAG will not pay lost anticipated profits or other economic loss, nor will TCAG pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing COUNTY's scope of work exceeds the unpaid balance of the Agreement, COUNTY must pay the difference to TCAG. Sanctions taken will be possible rejection of future proposals based upon specific causes of non-performance.

(c) Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to this Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY's services have been terminated by TCAG, said termination will not affect any rights of TCAG to recover damages against COUNTY.

(d) Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of TCAG for which COUNTY's services are to be performed, may immediately suspend performance by COUNTY, in whole or in part, in response to health, safety, or financial emergency, or a failure or refusal by COUNTY to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

10. LOSS OF FUNDING: It is understood and agreed that if the funding is either discontinued or reduced for this project for either TCAG or the COUNTY, either party shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least sixty (60) days prior written notice of such termination.

11. NOTICES:

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

TCAG:

Tulare County Association of Governments
c/o Ted Smalley, Executive Director
210 North Church, Suite B
Visalia, CA 93291
Phone Number: (559) 623-0450
FAX Number: (559) 733-6720

COUNTY:

County of Tulare
Laurie Mercer
Grants & Development Manager
5961 S. Mooney Blvd.
Visalia, CA 93277
Phone Number: (559) 624-7070
FAX Number: (559) 733-6162

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

12. **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, TCAG is relying on the personal skill, expertise, training and experience of COUNTY and COUNTY's employees and no part of this Agreement may be assigned or subcontracted by COUNTY without the prior written consent of TCAG.

13. **DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiations, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its

own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

14. FURTHER ASSURANCES: Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purpose of this Agreement.

15. CONSTRUCTION: This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of the Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

16. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

17. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or unforeseeable legal or equitable right or remedy.

18. WAIVERS: The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

19. ATTACHMENTS AND RECITALS: The recitals and the attachments to this Agreement are fully incorporated into and are integral parts of this Agreement.

20. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provisions of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

21. ENTIRE AGREEMENT REPRESENTED: This Agreement represents the entire agreement between TCAG and the COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without written consent of both parties.

22. ASSURANCES OF NON-DISCRIMINATION:

(a) COUNTY shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

(b) It recognizes that both TCAG and COUNTY have the responsibility to protect their employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, each party agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. TCAG, in its sole discretion, has the right to require COUNTY to replace any employee who provides services of any kind to TCAG pursuant to this Agreement with other employees where TCAG is concerned that its employees or clients may have been or may be subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude TCAG from terminating this Agreement with or without cause as provided herein.

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THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

**TULARE COUNTY ASSOCIATION
OF GOVERNMENTS**

COUNTY OF TULARE

Date: 6-20-13

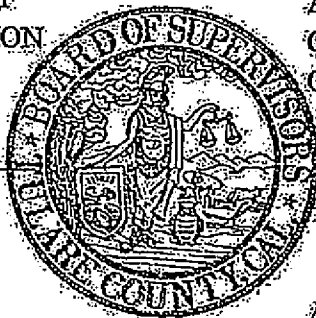
By: [Signature]
Executive Director

Date: 6/26/13

By: [Signature]
Chairman, Board of Supervisors

APPROVED BY THE BOARD OF
TULARE COUNTY ASSOCIATION
OF GOVERNMENTS ON:

Date: 5-20-13



Approved as to Form
Counsel for TCAG

By: [Signature]
#2013589

Date: 6-25-13

ATTEST: JEAN ROUSSEAU
County Administrative Officer/
Clerk of the Board of Supervisors

By: [Signature]
Deputy Clerk

Approved as to Form
County Counsel

By: [Signature]
Deputy
Matter ID: 2013506

Date: 6/21/2013

EXHIBIT C SCOPE OF WORK

CONSULTANT agrees to provide the following services for the PLAN as defined in the COUNTY'S Request for Proposals (RFP):

The Scope of Work, as shown below, identifies only the tasks within the grant which the selected consultant services are being requested.

Task 1.2 – Staff Coordination Meetings

Bi-Monthly meeting or calls to check progress will be conducted by the Consultant or County of Tulare staff. The goal of these meetings will be to ensure good communication and on schedule performance of upcoming tasks to keep the project on time and within budget. Staff from CRLAF and Caltrans will be invited to the staff coordination meetings.

Task 2.1 – Background Data Analysis

Consultant will identify current conditions by gathering background data. Opportunities and constraints will be used to guide preparation of the Plan including, but not limited to, existing land uses, population characteristics, and travel projections.

Task 2.2 – Existing Conditions Report

Using community resident input, consultant will complete an existing conditions report that will identify substandard pedestrian facilities, conditions that promote and provide for safe routes for pedestrian and bicyclist use, public transportation, and existing utility connections and infrastructure.

Task 2.3 – Infrastructure Audit

Consultant will visit Matheny Tract to get a better understanding of the existing infrastructure and opportunities in the community.

Task 3.1 – Initial Outreach to Community

Consultant will coordinate outreach to community members. All meetings (Community Workshops #1-3) will be publicly announced through newspaper press releases, fliers, and through local community groups. In addition, Matheny Tract Committee will, with the help of CRLA, create and distribute flyers door-to-door to maximize attendance. All public notices will be in English and Spanish and Spanish/English translators will be present at Community Workshops #1-3.

Through these three workshops, community input will be gained regarding developing a transportation improvement strategy plan to explore current transportation options, improvement opportunities, priorities, and guiding new investments. Public input will be important for developing an analysis

of infrastructure needs and utility (electrical, gas, cable, telephone, broadband) needs.

Task 3.2 – Community Workshop #1

A workshop will be held at the local church or another community meeting location and consultant will present the scope of the plan, the results of the infrastructure audit, and ask for feedback to develop the existing conditions report.

Task 3.3 – Community Workshop #2

An interactive workshop will present the community with priorities and opportunities on transportation access improvements in the community. The community members will decide which are of greatest priority. A draft streetscape plan will be presented.

Task 3.4 – Community Workshop #3

An informative workshop will be held with community members and interested participants to present the street design analysis and Draft Matheny Tract Transportation Infrastructure Plan.

Task 4.1 – Background Data Analysis Summary

Background data and community outreach data collection will be used in the summary for the Plan.

Task 4.2 – Existing Conditions Summary

A summary of existing conditions from Task 2.2 will be incorporated into the Draft and Final Plan.

Task 4.3 – Summary and Recommendations of Infrastructure Audit

A summary of infrastructure improvements will be provided through analysis. The recommendations shall be prioritized to coincide with future improvements or funding opportunities.

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Preliminary costs will be analyzed to determine costs for infrastructure improvements.

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The draft Plan shall incorporate existing conditions, background data, community input and needs, and capital/financial recommendations for infrastructure improvements. The draft plan will be subject to Caltrans review and approval.

Task 5.2 – Present results to the Board of Supervisors & Tulare City Council

The draft Plan results will be presented before the Tulare County Board of Supervisors and Tulare City Council. Staff reports and copies of the presentation will be provided to Caltrans.

Task 5.3 – Prepare a Final Plan

The consultant will prepare a final Plan based on feedback received during the draft Plan. The final Plan will be subject to Caltrans review and approval.

Task 5.4 – Adopt the Final Plan

The final Matheny Tract Community Transportation Plan will be adopted by the Tulare County Association of Governments, Tulare County Board of Supervisors, and the Tulare City Council.

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The consultant will prepare a final Plan based on feedback received during the draft Plan. The final Plan will be subject to Caltrans review and approval.

Task 5.4 – Adopt the Final Plan

The final Matheny Tract Community Transportation Plan will be adopted by the Tulare County Association of Governments, Tulare County Board of Supervisors, and the Tulare City Council.

EXHIBIT D
PROJECT TIMELINE

California Department of Transportation
 Transportation Planning Grants
 Fiscal Year 2012-2013

PROJECT TIMELINE

Project Title		Matheny Tract 2013 Transportation Infrastructure Plan		Grantee		Tulare County Association of Governments	
Task Number	Task Description	Responsible Party	Total Cost	Grant Amount	Local Cash Match	Local In-Kind Match	Deliverable
1.1	Project Kick-off Meeting	TCAG/Tulare County	\$0	\$0	\$0	\$0	Meeting notes and attendance sheet
1.2	Staff Coordination Meeting	Tulare County/TCAG	\$3,028	\$2,800	\$228	\$0	Monthly Meeting notes
1.3	Prepare Request for Proposals	Tulare County	\$1,000	\$1,000	\$0	\$0	Copy of Request for Proposal
1.4	Solicit Bids from qualified consultants	Tulare County	\$600	\$1,000	\$0	\$0	Letter Bids received; copies of proposals
1.5	Evaluate Bids/Award Contract	Tulare County	\$1,000	\$500	\$500	\$0	Consultant report, (as soon as approved)
1.6	Prepare/Execute Agreement	Tulare County	\$1,020	\$1,500	\$1,500	\$0	Copy of executed agreement
1.7	Callaxes	TCAG	\$2,700	\$2,500	\$200	\$0	Quarterly reporting and Invoicing
2.1	Field Study and Analysis	Consultant	\$4,800	\$4,800	\$0	\$0	Background data analysis
2.2	Background Data Analysis	Consultant	\$4,800	\$7,400	\$576	\$0	Existing Conditions Report
2.3	Infrastructure Audit	Consultant	\$13,410	\$12,500	\$1,010	\$0	Infrastructure audit summary
3.1	Initial Outreach to Community	Consultant/TCAG	\$2,810	\$2,800	\$10	\$0	Copies of fliers in Spanish and English; Contact List
3.2	Community Workshop #1	Tulare County/Consultant	\$4,324	\$4,000	\$324	\$0	Meeting Notes; Workshop Agenda/Summary; Photos
3.3	Community Workshop #2	Tulare County/Consultant	\$4,324	\$4,000	\$324	\$0	Meeting Notes; Workshop Agenda/Summary; Photos
3.4	Community Workshop #3	Consultant	\$4,324	\$4,000	\$324	\$0	Meeting Notes; Workshop Agenda/Summary; Photos

Activity	Activity Description	Activity Location	Activity Start Date	Activity End Date	Activity Duration	Activity Status	Activity Budget	Activity Actuals	Activity Variance	Activity Comments
4.1	Background Data Analysis summary	Consultant	5/1/00	5/31/00	31	Completed	\$3,848	\$3,848	\$0	Background data analysis complete in Plan
4.2	Existing conditions summary	Consultant	5/1/00	5/31/00	31	Completed	\$3,448	\$3,448	\$0	Existing conditions summary
4.3	Summary and Recommendations of Infrastructure Audit	Consultant	5/1/00	5/31/00	31	Completed	\$3,808	\$3,808	\$0	Summary and recommendations of Infrastructure audit
4.4	Estimated costs of infrastructure	Consultant	5/1/00	5/31/00	31	Completed	\$7,228	\$7,228	\$0	Infrastructure cost estimates
4.5	Financial opportunities/resources	Consultant	5/1/00	5/31/00	31	Completed	\$3,985	\$3,985	\$0	Financial opportunities/resources summary
5.1	Prepare a Draft Plan	Consultant	6/1/00	6/30/00	30	Completed	\$1,943	\$1,943	\$0	Draft Community Transportation Plan
5.2	Present results of the study to the BOS and Tulare City Council	Consultant	6/1/00	6/30/00	30	Completed	\$1,722	\$1,722	\$0	Presented to local needs
5.3	Prepare a Final Plan	Consultant	6/1/00	6/30/00	30	Completed	\$4,650	\$4,650	\$0	Draft Community Transportation Plan
5.4	Adopt the Final Plan	Tulare County	6/1/00	6/30/00	30	Completed	\$1,722	\$1,722	\$0	Resolution adopting the Final Plan
							\$33,960	\$33,960	\$0	

Note: Each task must contain a grant amount and a local cash match amount. Local cash match must be proportionally distributed by the same percentage throughout each task. Local (if-kind) match needs to be indicated where in-kind services will be used. Please review the grant program section that you are applying for for details on local match requirements. Make sure the project description is consistent with the scope of work.

474,300 8,250 3,450

EXHIBIT E INSURANCE REQUIREMENTS

CONSULTANT shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONSULTANT, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. CONSULTANT must submit endorsements to the General Liability and Auto Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the CONSULTANT.*
 - b. *For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.*
 - c. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the County.*
2. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONSULTANT, its employees, agents and subcontractors.
 - a. *Waiver of Subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the contractor, its employees, agents and subcontractors. CONSULTANT waives all*

rights against the County and its officers, agents, official, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible of self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONSULTANT shall file with the submitting department, certificates of insurance with original endorsements effecting coverage and a copy of the declarations page from the policy in effect in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.