

## CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT (hereinafter the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2011 (the "Effective Date") by and between the Tahoe Regional Planning Agency, a bi-state regional planning agency created by Public Law 96-551 (1980) (hereinafter the "TRPA"), and \_\_\_\_\_ (hereinafter the "Consultant"). TRPA and the Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

### RECITALS

- A. The Consultant desires to perform and assume responsibility and obligations for the services and provision of products, as hereinafter described on the terms and conditions set forth herein.
- B. TRPA desires to contract for such services and products as hereinafter described on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, TRPA and the Consultant agree as follows:

### OPERATIVE PROVISIONS

#### SECTION I

#### ENGAGEMENT AND SERVICES OF THE CONSULTANT

1. Engagement of Consultant. TRPA hereby engages the Consultant, subject to the terms and conditions set forth in this Agreement, to perform the services and provide products as set forth in Exhibit "A" (the "Services and Products"). The Consultant agrees to perform the Services and provide Products in accordance with the terms and conditions of this Agreement.
2. Performance of the Consultant. The Consultant accepts the relationship of trust and confidence established between TRPA and the Consultant by the terms of this Agreement. The Consultant covenants with TRPA to furnish its best skill, judgment and efforts, and to cooperate with TRPA and any other consultants or contractors engaged by TRPA in the provision of products and performance of the services. The Consultant covenants to use its best efforts to perform its duties and obligations under this Agreement in an efficient, expeditious, and economical manner, consistent with the best interests of TRPA.
3. The Consultant's Personnel. The Consultant shall provide adequate and experienced administrative and management personnel to perform the services.
4. The Consultant's Responsibilities for Costs and Expenses. The Consultant shall be responsible for all costs and expenses incurred relative to the Consultant, personnel of the Consultant, and subcontractors of the Consultant, in connection with the performance of the Services, including, without limitation, payment of salaries, fringe benefits contributions, payroll taxes, withholding taxes and other taxes or levies, office overhead expense, travel expenses, telephone and other telecommunication expenses, and document reproduction expenses.

SECTION II

RESPONSIBILITIES OF THE CONSULTANT

1. Personnel. The Services shall be performed by the Consultant or under its supervision. The Consultant represents that it possesses the professional and technical personnel required to perform the Services. TRPA retains the Consultant on an independent contractor basis and the Consultant is not an employee of TRPA. The personnel performing the Services on behalf of the Consultant shall at all times be under the Consultant's exclusive direction and control. The Consultant shall pay all expenses including, without limitation, salaries, fringe benefit contributions, payroll taxes, withholding taxes and other taxes or levies, and all other amounts due such personnel or due others as a result of the performance by such personnel of the Services in connection with their performance of the Services and other amounts due such personnel in connection with their performance of Services. The Consultant shall also be responsible for all reports and documentation required for its employees.
2. Cooperation/Project Administrator. The Consultant shall work closely and cooperate fully with TRPA's designated Project Administrator, and any other agencies which may have jurisdiction or interest in the Services. The Project Administrator will administer this Agreement. The Project Administrator, or his/her designee, shall be the principal officer of the TRPA, for liaison with the Consultant, and shall review and give approval to the details of the Services as they are performed. The TRPA designates [REDACTED], as its Project Administrator, but reserves the right to appoint another person as Project Administrator upon written notice to the Consultant.
3. Project Manager. The Consultant shall designate and assign a project manager ("Project Manager"), who shall coordinate all phases of the Services. The Project Manager shall be available to the TRPA at all reasonable times. The Consultant designates [REDACTED] to be its Project Manager.
4. Time of Performance. The Products to be provided and Services to be performed by the Consultant under and pursuant to this Agreement shall be conducted in accordance with the timetables contained in Exhibit 'A'.
5. Report Materials. At the completion of the Services and upon delivery of Products, the Consultant shall deliver to the TRPA all documents, catalogs, quotes, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant, or prepared by others for the use and/or benefit of the Consultant, or otherwise provided to the Consultant by the TRPA or by others under this Agreement (the "Report Materials"). Any work product produced by the Consultant pursuant to this Agreement and any Report Materials provided for the use/or benefit of the Consultant shall be considered the property of the TRPA and shall be delivered to the TRPA upon the expiration or termination of this Agreement.

Any text work product shall be submitted to TRPA together with a copy in a digital format that is compatible with either: 1) Microsoft Word for Windows, or 2) Excel for Windows. Any graphic work product submitted to TRPA in digital format must be submitted in one of the following formats: 1) Adobe Illustrator; 2) EPS (encapsulated postscript); 3) Adobe Photoshop files; 4) Tiff files; 5) Pict files; or, 6) ARC/Info graphic files. Any graphic work product prepared for TRPA shall,

whenever feasible, also be submitted with a copy in digital format compatible with one of the six formats outlined above.

6. TRPA Policy. The Consultant shall discuss and review all matters relating to the provision of Products and Services with the Project Administrator in advance of all critical decision points in order to ensure that the Services are provided and Products are delivered in a manner consistent with the goals and policies of the TRPA.
7. Conformance to Applicable Requirements. All aspects of the provision of Products and Services by the Consultant shall at all times conform to applicable city, county, state, and federal requirements and be subject to approval of the Project Administrator and TRPA.
8. Indemnification. Except for the active negligence or willful misconduct of TRPA, Consultant shall indemnify, defend and hold harmless the TRPA, its boards, officers, employees, and agents against, and will hold and save them and each of them, harmless from any and all actions, claims, penalties, obligations, liabilities, or damages that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the provision of Products and Services by the Consultant, or arising out of the operations or activities of the Consultant, its agents, employees, or subcontractors of any tier provided for herein in connection therewith:
  - A. The Consultant will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorney's fees, with an attorney of TRPA's own choosing, incurred in connection therewith.
  - B. The Consultant will promptly pay any judgment rendered against the Consultant and/or the TRPA covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such Products and Services, operations, or activities of the Consultant hereunder, and the Consultant agrees to save and hold the TRPA harmless therefrom.
  - C. In the event the TRPA is made a party to any action or proceeding filed or prosecuted against the Consultant for such damages or other claims arising out of or in connection with the products, work, operations, or activities of the Consultant hereunder, the Consultant agrees to pay to the TRPA any and all costs and expenses incurred by TRPA in such actions or proceedings, together with reasonable attorneys' fees for an attorney of TRPA's own choosing.
  - D. The provisions of this Paragraph shall survive termination of this Agreement.
9. Standard of Care; Licenses. The Consultant represents and warrants that it and all personnel engaged in providing Products and performing Services are and shall be fully qualified and are authorized or permitted under state and local law to perform such Services. The Consultant shall provide Products and perform the Services in a skillful and competent manner. The Consultant shall be responsible to TRPA for any errors or omissions in the execution of its duties hereunder. The Consultant

represents and warrants that it and all personnel engaged in providing Products and performing the Services have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

10. Insurance. Without limiting the Consultant's indemnification of the TRPA, the Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement a policy or policies of insurance of the type and amounts described below, signed by a person authorized by that insurer to bind coverage on its behalf, and satisfactory to the TRPA, in its sole discretion. The Consultant shall provide to the TRPA certificates of insurance and copies of policies, if requested by the TRPA, of the following insurance, with Best's Class A - or better carriers:

- (1) Workers' compensation insurance covering all employees and principals of the Consultant, in a minimum amount of \$1 million per accident, effective per the laws of the State of California [or Nevada].
- (2) Commercial general liability insurance covering third party liability risks, including, without limitation, contractual liability, in a minimum amount of \$1 million combined single limit per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate shall apply separately to this project, or the general aggregate limit shall be twice the occurrence limit. The Policy shall add as insured's the TRPA, its Board, Advisory Commission, officials, officers and employees, and agents for all liability arising from the Consultant's Services as described herein.
- (3) Commercial auto liability and property insurance covering any owned and rented vehicles of the Consultant in a minimum amount of \$1 million combined single limit per accident for bodily injury and property damage.
- (4) Professional liability insurance covering errors and omissions on the part of the Consultant, in a minimum amount of \$1 million per claim on a claims made form. Such insurance shall include coverage or an extended reporting period for two years [in some cases longer] beyond the completion of the Consultants performance of this agreement pursuant to the terms and conditions described herein.
- (5) Any additional forms of insurance, which the Consultant and/or TRPA determine may be necessary for its proper protection and performance of this Agreement.

A. Said policy or policies shall not be suspended, voided, cancelled by either party, or reduced in coverage or in limits except after thirty (30) days prior notice has been given in writing to the TRPA. Cancellation or modification of insurance coverage may be grounds for immediate termination of this agreement. The Consultant shall give TRPA prompt and timely notice of any claims made or suits instituted in association with or arising out of the Consultant's performance of this Agreement.

- B. The Consultant shall include subcontracting consultants, if any, as insured's under its policies, or shall furnish separate certificates and endorsements for each subcontractor. All coverage for each subcontractor shall be subject to the requirements stated herein.
11. Prohibition Against Assignment.
- A. The Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly by operation of law, without the prior written consent of the TRPA. Any attempt to do so without the prior written consent of the TRPA shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer.
- B. The sale, assignment, transfer, or other disposition of any of the issued and outstanding capital stock of the Consultant, if the Consultant is a corporation or of the interest of any general partner or joint venturer or syndicate member or co-tenant of the Consultant, if the Consultant is a partnership or a joint venture, or a syndicate or a co-tenancy, which shall result in changing the control of the Consultant, shall be deemed an assignment of this Agreement. For purposes of this paragraph, "control" means the ownership of fifty percent (50%) or more of the voting power of the corporation or fifty percent (50%) or more of the voting power of a partnership, joint venture, syndicate, or co-tenancy.
12. Progress. The Consultant is responsible to keep the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Products and the Services, activities performed and planned, and any meetings that have been scheduled or are desired relative to the provision of Products and Services or relative to this Agreement.
13. Confidentiality. No news releases, including photographs, public announcements, or confirmations of the same, of any part of the subject matter of this Agreement or any phase of the provision of Products and Services shall be made without prior written consent of the TRPA. The information which results from provision of Products and Services in this Agreement is to be kept confidential unless the release of information is authorized by TRPA.
14. Scheduling. The Consultant shall generally have no obligation to work any particular schedule, provided the Consultant will coordinate with the TRPA in achieving the results sought under the terms of this Agreement.
15. No Set Hours/Right to Contract. The Consultant's obligation hereunder is to complete the Services and to meet any deadlines set forth therein for the provision of Products. Except as provided herein, the Consultant has no obligation to work any particular hours or days or any particular number of hours or days. In this regard, the Consultant retains the right to contract for similar Services with any other entity, public or private.
16. Results. The TRPA agrees that it will have no right to control or direct the details, manner, or means by which the Consultant accomplishes the results of the Services performed hereunder.

SECTION III  
RESPONSIBILITIES OF TRPA

1. Compensation. In consideration of the provision of Products and performance by the Consultant of the Services, the TRPA shall pay to the Consultant the amount/amounts as quoted and set forth in Exhibit "B" (the "Compensation") for Tasks 1-4.
2. Extra Work. The Consultant shall not receive additional Compensation for any extra work or Products provided unless such extra work or provision of Products has been authorized by the TRPA as an amendment to this Agreement prior to the commencement of the extra work. The TRPA shall pay the Consultant for extra work and/or products in accordance with the schedule set forth on Exhibit "B".
3. Invoicing. The Consultant shall submit invoices to the TRPA on a monthly or on such other basis as set forth in Exhibit "B." Each invoice will be itemized, identify the project name or number, indicate the balance left on the contract net of the current invoice expenses, include the dates of work performed, and when applicable the percentage of completion for each task.
4. Payment to Consultant. TRPA shall make payments to the Consultant within thirty (30) days following the date of receipt of the invoice unless TRPA disputes the amount of the Compensation the Consultant claims it is owed under this Agreement. Payments shall be made on the basis of estimated task costs set forth in Exhibit "B."
5. Withholding.
  - A. Disputed Sums. The TRPA may withhold payment of any portion of the Compensation if payment is disputed until resolution of the dispute with the Consultant. Such withholding by the TRPA shall not be deemed to constitute a failure to pay by the TRPA. The Consultant shall not discontinue the provision of Products or performance of Services for a period of thirty (30) days from the date Compensation is withheld hereunder. The Consultant shall have an immediate right to appeal to the TRPA with respect to withheld amounts. The determination of the TRPA with respect to such matters shall be final. The Consultant shall be entitled to receive interest on any portions of the Compensation withheld which are thereafter deemed to be properly payable to the Consultant at the rate of five percent (5%) per annum, simple interest.
  - B. Retention. The TRPA shall have the right to retain an amount equal to ten percent (10%) of the Compensation ("Retention"). The Retention shall be released to the consultant upon final approval and acceptance of the Products and Services by TRPA. The TRPA shall have the right, without further liability to the Consultant, to utilize the Retention to satisfy obligations of the TRPA relative to the Services in the event the Consultant does not complete the Services satisfactory to the TRPA.

#### SECTION IV TERMINATION

1. Termination. TRPA may terminate this agreement upon thirty (30) days prior written notice to the Consultant. If the Agreement is so terminated, the Consultant shall be

compensated for all completed services rendered up to and including the day of termination.

2. Termination Upon Event of Default. TRPA may immediately terminate this Agreement upon an Event of Default, defined below. Upon a termination of this Agreement, the TRPA shall pay to the consultant the part of the Compensation which would otherwise be payable to the Consultant with respect to the Services which had been completed as of the date of termination, less the amount of all previous payments with respect to the Compensation.
  
3. Events of Default. Each of the following events shall constitute an "Event of Default":
  - A. The Consultant fails to observe, perform, or comply with any material term, covenant, agreement, or condition of this Agreement which is to be observed, performed, or complied with by the consultant, of such failure to continue uncured for three (3) calendar days after the TRPA gives the Consultant notice of any failure and specified the nature of such failure.
  - B. The Consultant commits any fraud, misrepresentation, breach of fiduciary duty, willful misconduct, or intentional or breach of any provision of this Agreement.
  
4. Budget Contingency Clause
  - A. Limitation of TRPA Liability. The maximum amount to be encumbered under this Agreement for the [REDACTED] fiscal year ending June 30, [REDACTED] shall not exceed \$ [REDACTED].
  - B. It is mutually agreed that if the TRPA Budget of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the TRPA shall have no liability to pay any funds whatsoever to the Consultant or to furnish any other considerations under this Agreement and the Consultant shall not be obligated to perform any provisions of this Agreement.
  - C. If funding for any fiscal year is reduced or deleted by the TRPA Budget for purposes of this program, the TRPA shall have the option to either cancel this Agreement with no liability occurring to the TRPA, or offer an Agreement amendment to the Consultant to reflect the reduced amount.

## SECTION V

### GENERAL PROVISIONS

1. Nondiscrimination by the Consultant. The Consultant represents and agrees that the Consultant, its affiliates, subsidiaries, or holding companies do not and will not discriminate against any subcontractor, consultant, employee, or applicant for employment because of race, religion, color, sex, handicap, national origin, ancestry, creed, physical disability (including HIV and AIDS), medical condition, age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave. Such nondiscrimination shall include, but not be limited to, the following: employment, upgrading, demotion, transfers, recruitment, recruitment advertising,

layoff, termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship.

2. TRPA's Rights to Employ Other Consultants. The TRPA reserves the right to employ other consultants in connection with this project.
3. Conflicts of Interest.
  - A. The Consultant or its employees may be subject to the provisions of Article III (a)(5) of the Tahoe Regional Planning Compact (P.L. 96-551, 94 Stat. 3233, Cal. Gov't Code Section 66801, N.R.S. 277.200), which requires disclosure of any defined economic interest and prohibits such persons from attempting to influence Agency decisions affecting certain economic interests.
  - B. The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose financial interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.
  - C. If subject to the Compact or the Act, the Consultant shall conform to all requirements of the Compact or the Act, as required. Failure to do so constitutes a material breach and is grounds for termination by this Agreement by the TRPA.
4. Assignments and Subcontractors. The Consultant shall not subcontract any portion of the Services or provision of Products except as expressly stated herein, without prior written consent of the TRPA. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.
5. Notices. All notices required hereunder shall be given in writing to the following addresses or such other addresses as the parties may designate by written notice:

To the TRPA:                      Tahoe Regional Planning Agency  
   **Attn:**  
   128 Market Street  
   PO Box 5310  
   Stateline, Nevada 89449-5310  
   **phone**  
   **e-mail**

**To the Consultant:**

Notice shall be deemed received as follows, depending upon the method of transmittal by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail, certified, upon receipt requested, as of 72 hours after deposit in the U.S. Mail.

6. Authority to Enter Agreement. The Consultant warrants that it has all requisite power and authority to conduct its business and to execute and deliver, and to perform all of its obligations under this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement so as to bind each respective Party to perform the conditions



contemplated herein. If the Consultant is a corporation or partnership, the Consultant also warrants that it is duly organized, validly existing in good standing under the laws of the State of California, and will continue to be so during the term of this Agreement

7. Severability/Illegality. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect. The illegality of any provision of this Agreement shall not affect the remainder of this Agreement.
8. Time is of the Essence. Time is of the essence in this Agreement, and all parties agree to execute all documents and to proceed with due diligence to complete all covenants and conditions set forth herein.
9. Attorneys' Fees and Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.
10. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Nevada. Any lawsuit brought to enforce this Agreement shall be brought in the appropriate court in Nevada.
11. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any of the provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be deemed a waiver and no waiver shall be binding unless executed in writing by the party making the waiver. No waiver, benefit, privilege, or service voluntarily given or performed by other parties shall give the other party any contractual right by custom, estoppel, or otherwise.
12. Days. Any term in this Agreement referencing time, days, or period of performance shall be deemed to be calendar days and not workdays.
13. Entire Agreement. This Agreement contains the entire agreement of the TRPA and the Consultant and supersedes any prior or written statements or agreements between the TRPA and the Consultant. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both parties.
14. Binding on Assigns. Each and all of the covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the respective parties.
15. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.
16. Captions. The captions of the various articles and paragraphs of this Agreement are for the convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or of any part or parts of this Agreement.
17. Construction. In all cases, the language in all parts of this Agreement shall be construed simply, according to its fair meaning and not strictly for or against any

party, it being agreed that the parties or their agents have all participated in the preparation of this Agreement.

18. Cooperation/Further Acts. The parties shall fully cooperate with one another in attaining the purposes of this Agreement and, in connection therewith, shall take any such additional further acts and steps and sign any such additional documents as may be necessary, appropriate, and convenient as related thereto.
19. Survival. The obligations of the Consultant under this Agreement including, without limitation, the obligations set forth in Section II, Paragraph 8 (Indemnification), and Section II, Paragraph 10 (Insurance), as they relate to the Services, shall survive the termination or expiration of this Agreement.
20. Incorporation of Recitals and Exhibits.
  - A. The "Recitals" constitute a material part hereof, and are hereby incorporated by reference herein as though fully set forth.
  - B. The "Exhibits" constitute a material part hereof, and are hereby incorporated by reference herein as though fully set forth.
21. References: All references to the Consultant shall include all personnel, employees, agents, and subcontractors of the Consultant.
22. No Funds to Unqualified Aliens. Under law, no funds received under this Agreement shall be paid to any alien who is "not a qualified alien" within the meaning of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Act"). The Consultant shall be responsible to ensure that no funds the Consultant receives from TRPA are paid to any employee or subcontractor in violation of this Act.
23. Certification Regarding Lobbying. The Consultant certifies that no funds received under this Agreement have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of a Member of the Legislature or Congress, or an employee of a Member of the Legislature or Congress.
24. Certification Regarding Debarment and Suspension. The Consultant certifies to the best of its knowledge and belief that it and its principals:
  - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - B. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

- C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (24)(b) of this Agreement; and
- D. Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or Local) terminated for cause of default.

IN WITNESS WHEREOF, the parties hereto have accepted and made and executed this Agreement upon the terms, conditions, and provisions set forth above as of the Effective Date.

TAHOE REGIONAL PLANNING AGENCY

BY: \_\_\_\_\_  
          JOANNE S. MARCHETTA  
          EXECUTIVE DIRECTOR

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

**CONSULTANT**

BY: \_\_\_\_\_

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

EXHIBIT A  
SERVICES AND PRODUCTS

EXHIBIT B  
COMPENSATION