



# **Policy for Reviewing Unsolicited Proposals**

Adopted September 25, 2019

## INTRODUCTION

The Transportation Agency for Monterey County (TAMC) follows state and federal procurement rules via an adopted Procurement Policies and Procedures and Contract Management Manual to ensure engagement in full and fair competition, and to obtain the best value, price and quality for taxpayer-funded goods and services. Typically, consultant services are obtained using a Request for Bids, Qualifications and/or Proposals process, and the procedures are open to public scrutiny via the TAMC Board of Directors and its committees.

Occasionally, TAMC receives unsolicited proposals from consultants wishing to do business with TAMC or from companies interested in public-private partnerships and/or joint development. This Policy for Reviewing Unsolicited Proposals is designed to facilitate review of those proposals in a consistent manner. This Policy document is for internal use. Exhibit A, Conceptual Proposal Form, and Exhibit B, Pre-Qualification Application, will be made available on the TAMC website for those interested in submitting unsolicited proposals.

## WHAT IS AN UNSOLICITED PROPOSAL?

An Unsolicited Proposal should be:

- Innovative and pragmatic;
- Independently originated and developed by the proposer;
- Submitted by parties external to TAMC, prepared without TAMC's supervision, endorsement, direction, or direct involvement; and
- Sufficiently detailed that the Proposal benefits in support of TAMC's mission and responsibilities are readily apparent.

An Unsolicited Proposal is not any of the following:

- An offer responding to any published requests for bids/qualifications/proposals; or
- An advance or premature proposal for property or services that TAMC could acquire through competitive methods (submitted within the budget year before release of a published request for proposal); or
- A replacement for an existing contract that is already in effect; or
- An opportunity to stipulate the means and methods of an existing contractual relationship.

This Policy calls for two levels of review for unsolicited proposals: a "Phase One – Conceptual Proposal" and a "Phase Two – Detailed Proposal." In order to conserve resources and ensure consistency, all Unsolicited Proposers must complete and submit the Conceptual Proposal Form (Exhibit A). Only after the Conceptual Proposal has been reviewed by TAMC staff and the TAMC Executive Committee, will the Proposer be asked to proceed to the second level of review. Permission to proceed to the Detailed Proposal does not commit TAMC to the Unsolicited Proposal.

## **Phase One – Conceptual Proposal**

### **CONTENT – CONCEPTUAL PROPOSAL**

Unsolicited Proposers shall complete and submit Exhibit A, Conceptual Proposal Form, in order to trigger a Phase One review.

### **PROCESS – CONCEPTUAL PROPOSAL**

Upon receipt of a Conceptual Proposal, the TAMC Executive Director, or designee, will take the following steps:

1. Acknowledge receipt of the proposal; and
2. Determine whether the proposal meets the threshold requirements of an Unsolicited Proposal:
  - Satisfies the definition of a Reviewable Unsolicited Proposal;
  - Includes all required content and attachments;
  - Contains sufficient detail to enable TAMC to perform an adequate evaluation;
  - Is submitted by parties external to TAMC, has been approved by a responsible official or other representative authorized to contractually obligate the proposer; and
  - Complies with this Policy's requirements for use and disclosure of data.

### **EVALUATION – CONCEPTUAL PROPOSAL**

If the proposal meets the threshold requirements, TAMC will take the following steps:

1. Staff will present the Conceptual Proposal to the Executive Committee (a public meeting subject to the Brown Act).
2. Per direction of the Executive Committee, staff will notify the proposer of TAMC's decision.

If the proposal meets the threshold requirements, staff and the Executive Committee will determine the evaluation criteria, as necessary, to reflect the specific proposal, but generally will consider the following factors:

1. The proposal offers direct or anticipated benefits to TAMC and the community;
2. The proposal is consistent with TAMC's mission, goals and objectives;
3. The proposal satisfies a need for TAMC that can be reasonably accommodated in TAMC's annual long-term capital and operating budgets without displacing other planned expenditures and without placing other committed projects at risk;
4. The proposal offers goods or services that TAMC may not have intended to procure or provide through the normal TAMC contract process;
5. The proposal offers goods or services that are within TAMC's jurisdiction or control; and
6. Any other factors appropriate for the proposal.

The possible outcomes may be to discontinue the process, to proceed to Phase Two, or to pursue a competitive procurement.

## Phase Two – Detailed Proposal

### PROCESS – REQUEST FOR DETAILED PROPOSAL

If TAMC desires to proceed to Phase Two, TAMC will issue a Request for a Detailed Proposal asking the proposer to complete Exhibit B, Pre-Qualification Application. TAMC may include the following information in the Request:

- A summary of Phase I Project Evaluation;
- A description of the request for additional information process and purpose;
- A description of the problem or opportunity being addressed;
- Relevant background, context, parameters and policies;
- Functional, technical and legal requirements;
- Requests for other project related information related to scope, budget, schedule, personnel, risks, data, performance measurement, potential impacts, etc.; and
- Requests for specific modifications or clarifications to the scope of the original proposal.

In addition, TAMC will seek an agreement with the proposer to recover the costs of TAMC further evaluation of the proposal, including staff time and outside costs, if needed.

### CONTENT – DETAILED PROPOSAL

Unsolicited Proposers shall complete and submit Exhibit B, Pre-Qualification Application, in order to trigger a Phase Two review.

### EVALUATION – DETAILED PROPOSAL

Detailed Proposals will be evaluated promptly, at a minimum in accordance with the criteria set out in this section, as well as any other evaluation criteria identified in the Request for Detailed Proposal.

Threshold Review: Before initiating a comprehensive evaluation, TAMC staff will determine if the Detailed Proposal continues to meet the threshold requirements set out in Phase One and the requirements specifically set out in the Request for Detailed Proposal.

Evaluation Criteria: After the threshold review, TAMC staff will confirm the proposal meets the following minimum evaluation criteria:

1. The proposer's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives;
2. The proposer's financial capacity to deliver the goods or services defined in the proposal;
3. Viability of the proposed schedule and TAMC's ability to meet activities required;

4. TAMC's capacity to enter into a contract and/or otherwise provide requested resources;
5. The qualifications, capabilities and experience of key personnel who are critical in achieving the proposal objectives;
6. The relative costs and benefits of the proposal with respect to improving mobility and accessibility in Monterey County;
7. The specific details of the cost/revenue generated; and
8. Any other factors appropriate for the proposal.

## **COST RECOVERY – AGREEMENT WITH TAMC**

In addition to providing the additional information requested in the Detailed Proposal, proposers shall enter into an agreement with TAMC to compensate TAMC for personnel and other expenses incurred in further review. A sample Agreement is attached as Exhibit C.

## **RECOMMENDATION**

The evaluation team will review the Detailed Proposal and make a recommendation to TAMC's Executive Director and Executive Committee. Per direction of the Executive Committee, staff will notify the proposer of next steps.

## **FULL AND OPEN COMPETITION REQUIREMENTS**

TAMC's receipt of a Reviewable Unsolicited Proposal does not, by itself, justify a contract award without full and open competition. If the Unsolicited Proposal offers a proprietary concept that is essential to contract performance, it may be deemed a Sole Source, consistent with TAMC Procurement policies. If not, TAMC may pursue a competitive procurement. Nothing in this policy or otherwise requires TAMC to act or enter into a contract based on an Unsolicited Proposal. TAMC may decline an Unsolicited Proposal at any time during the process.

## **PREREQUISITES TO CONTRACT NEGOTIATION**

The duly authorized TAMC representative(s) may commence contract negotiations only after the following prerequisites have been met:

1. An Unsolicited Proposal has received a favorable comprehensive evaluation;
2. TAMC staff supports its recommendation, identifies the necessary funds in the Agency Budget, and provides a sole-source justification (if applicable); and
3. TAMC Executive Director and Executive Committee approve proceeding with negotiations.

If the proposal exceeds the Executive Director's contracting authority or if environmental determinations are necessary, the Board of Directors' approval will be required, and the proposer will be notified of the date of the meeting when the proposal will be discussed.

## **General Requirements**

### **PROHIBITION OF USE OF CONFIDENTIAL INFORMATION FOR SOLICITATIONS**

If TAMC's decision is to pursue a competitive procurement, TAMC personnel shall not use any data, or any confidential patented, trademarked or copyrighted information or confidential technical or financial proprietary information, as identified by the proposer, as the basis for a solicitation or in negotiations with any other firm, unless the proposer is notified of and agrees to the intended use.

### **PUBLIC RECORDS ACT**

Unsolicited Proposals are subject to the provisions of the California Public Records Act (California Code Government Code §6250 et seq.).

Public Contract Code Section 22164 provides that information that is not otherwise a public record pursuant to the California Public Records Act shall not be open to public inspection. Any documents provided by the proposer to TAMC marked "Trade Secret," "Confidential" or "Proprietary," or any financial records provided by the proposer to TAMC, shall be clearly marked with the proposer's name. TAMC will use its best efforts to inform the proposer of any request for records that may involve any such documents. If a proposer fails to seek injunctive relief preventing the disclosure of records, the proposer shall be deemed to have waived the proposer's right to object.

In the event of litigation concerning the disclosure of any records claimed to be exempt from disclosure by a proposer, TAMC's sole involvement will be as a stakeholder, retaining the records until otherwise ordered by a court. The proposer, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the records claimed to be exempt from disclosure, and shall indemnify and hold TAMC harmless from all costs and expenses, including attorney's fees in connection with any such action.

## Exhibit A

### Conceptual Proposal Form

**Phase One of TAMC’s Reviewable Unsolicited Proposal process involves submitting this form. Submit only the information required by this form. If TAMC determines that the proposal should proceed to Phase Two, TAMC will issue a Request for a Detailed Proposal.**

**PLEASE BE ADVISED THAT THIS COMPLETED FORM WILL BE DISCUSSED AT A PUBLIC MEETING OF THE TAMC EXECUTIVE COMMITTEE, AND THAT SOME RECORDS MAY BE SUBJECT TO DISCLOSURE PURSUANT TO A PUBLIC RECORDS REQUEST.**

#### PART 1: BASIC INFORMATION

Proposer Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Further contact information: \_\_\_\_\_

Type of organization: \_\_\_\_\_

Technical personnel names & contact information: \_\_\_\_\_

Business personnel names & contact information: \_\_\_\_\_

*These individuals should be responsible for answering TAMC’s technical or business questions concerning the proposal or any subsequent agreement concerning the proposal.*

#### PART 2: TECHNICAL INFORMATION

Title of the proposal: \_\_\_\_\_

Abstract of the proposal is attached

*To move forward in the Unsolicited Proposal process, the abstract must include a brief – but complete – discussion of the following:*

1. Objectives
2. Method of approach
3. Nature and extent of anticipated results; and
4. Manner in which the work will help support accomplishment of TAMC’s mission.

Technical expertise the proposer needs from TAMC: \_\_\_\_\_

### PART 3: FINANCIAL INFORMATION

Proposed price or total estimated cost: \_\_\_\_\_

Revenue: \_\_\_\_\_

*Be concise but provide sufficient detail for TAMC to meaningfully evaluate the proposal.*

Financial information the proposer needs from TAMC: \_\_\_\_\_

### PART 4: PROCEDURAL INFORMATION

Period of time for which the proposal is valid: \_\_\_\_\_

- Proprietary data has been submitted with this proposal and such data is deemed confidential by the proposer in the event of a request submitted to TAMC under the California Public Records Act.

*Any proprietary data must be clearly designated, as well as the legal provision allowing exemption from disclosure claimed.*

- Other government entities or private parties have received this proposal.

Please explain: \_\_\_\_\_

- Other government entities or private parties may provide funding for this proposal.

Please explain: \_\_\_\_\_

- There are patents, copyrights and/or trademarks applicable to the goods or services proposed.

Please explain: \_\_\_\_\_

- There is additional information not requested in this form that would allow TAMC to evaluate this proposal at this conceptual phase.

Describe: \_\_\_\_\_

### PART 5: SIGNATURE

Name: \_\_\_\_\_

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

Title: \_\_\_\_\_

*The individual who signs this form must be authorized to represent and contractually obligate the Proposer.*

## Exhibit B

### Pre-Qualification Application

Name of Applicant Firm: \_\_\_\_\_

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

Preparer's Name: \_\_\_\_\_

Phase Two of TAMC's Reviewable Unsolicited Proposal process involves submitting this form and providing the information requested in the Request for a Detailed Proposal.

**THIS PAGE MUST BE COMPLETED AND INCLUDED WITH THE APPLICATION**

**READ THE INSTRUCTIONS BEFORE FILLING OUT THE QUESTIONNAIRE**

## INSTRUCTIONS

1. This application should be completed by a person in the firm who is knowledgeable of and duly authorized to attest to the past and present operations of the firm and its policies.
2. All questions must be answered completely, and any “Yes” answers must be fully explained. Please note that a Yes answer to any question does not automatically result in denial of pre-qualification for a procurement.
3. Please be aware that TAMC is subject to the California Public Records Act and that some of the material to be submitted may be subject to public disclosure, pursuant to a Public Records Act Request. You are advised to consult with your own legal counsel as to which materials may be legally exempt from disclosure.

## DEFINITIONS

1. **Affiliate** is defined as any one of the following:
  - a. Any Firm other than Applicant Firm which owns 25% or more of Applicant Firm, such as parent companies or holding companies;
  - b. A subsidiary or a Firm in which Applicant Firm owns 25% or more;
  - c. A Firm in which a major stockholder or owner of Applicant Firm owns controlling interest;
  - d. A Firm with which Applicant Firm has or has had an unseverable business or professional identity, and
  - e. Any permanent or temporary common business enterprise relationship in which the parties share operating responsibility and profits such as joint ventures.
2. **Key Person** – For purposes of pre-qualification a key person is
  - a. Any person in Applicant Firm who owns 10% or more of the Firm and/or those who make decisions with respect to its operations, finances, or policies, such as the President, CEO, CFO, COO, and, in the case of partnerships, the General Partner(s);
  - b. Corporate Secretaries and Treasurers, as well as Directors, if they meet criteria #1, above;
  - c. Division or Regional Business Managers who operate away and independently from the Applicant Firm, but only if the division or regional office is negotiating directly with TAMC.

## APPLICATION SUBMITTAL

Email this application to:

Executive Director  
[info@tamcmonterey.org](mailto:info@tamcmonterey.org)

If you have questions, call the TAMC office at (831) 775-0903.

## SECTION I: IDENTIFICATION

### 1. Applicant Firm

A. \_\_\_\_\_  
Name of Applicant Firm Tax ID No. or Social Security Number

B. \_\_\_\_\_  
Address

C. \_\_\_\_\_  
(Mailing Address, if different from above)

D. \_\_\_\_\_  
If doing business with TAMC under a DBA or other name, include legal name of the company and Tax ID No., if different

E. Primary Company Telephone No. ( ) \_\_\_\_\_ Fax No. ( ) \_\_\_\_\_

F. Applicant Firm's Contact Person for Pre-Qualification Office follow-up:

\_\_\_\_\_

Name	Position	E-Mail	Telephone Number
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G. Has the Applicant Firm changed its address or has the Firm or its owner operated under any other name(s) including other DBAs in the past five years? If yes, explain fully on a separate sheet of paper.  No  Yes

H. Type of business organization: \_\_\_\_\_

Year organization established: \_\_\_\_\_ Number of current employees: \_\_\_\_\_

Sole Proprietor

Corporation: Date and State of Incorporation: \_\_\_\_\_

Limited Liability Corporation (LLC): Date and State of Incorporation: \_\_\_\_\_

Limited Partnership (LP)

Limited Liability Partnership (LLP)

General Partnership (GP): Date and State of Partnership filing: \_\_\_\_\_

Other (describe): \_\_\_\_\_

- I. List general type of business in which Applicant Firm is engaged (may include more than one). Attach copies of business licenses, if appropriate:

- J. List type of product or service to be provided to TAMC:

**SECTION II: OWNERSHIP/MANAGEMENT, PROJECT TEAM MEMBERS, AND RELATED ENTITIES**

**1. Owners/Key Persons**

List Owners and Key Persons of Applicant Firm. For large publicly traded companies, list only Key Persons. (See DEFINITIONS for clarification if necessary.)

Full Legal Name	Title	Social Security No. (last four digits only)	% Of Ownership

[Use additional sheets if necessary]

**2. Related Entities (Affiliates/Subsidiaries/Joint Ventures)**

A. List affiliates, subsidiaries, holding companies, joint ventures, etc., of Applicant Firm. If no affiliates, state NONE. N/A is not an acceptable answer. Provide organizational, geographical or functional chart, if it would assist in clarifying the line(s) of authority. (See DEFINITIONS for clarification if necessary.)

Affiliate Name & Address	Tel.#	% Owned	Top Executive's Name	*Type of Relation

\*Type of Relationship: 1. Joint Venture (JV), 2. Parent Co (PC), 3. Holding Co (HC), 4. Subsidiary (S), 5. Other (O), please explain.

B. At any time during the past five years have any Owners or Key Persons of Applicant Firm (if yes, explain fully):

- a. Served as Key Person, Officer or Director, in any other Firm not affiliated with Applicant Firm? If so, please explain in a separate sheet.
  - No
  - Yes
- b. Had any ownership interest in any other Firm other than shares of publicly owned companies? If so, please explain in a separate sheet.
  - No
  - Yes

**SECTION III: CONTRACTING HISTORY**

**1. Contracting History**

A. List the applicant Firm’s three largest government contracts, subcontracts, or sales. If none, list the three largest contracts with non-governmental entities.

	<b>Contract #1</b>	<b>Contract #2</b>	<b>Contract #3</b>
<b>Agency/Owner</b>			
<b>Contract No.</b>			
<b>Name/Location</b>			
<b>Describe Goods or Services Furnished</b>			
<b>Were you a Prime or Subcontractor?</b>			
<b>Start Date/Complete Date</b>			
<b>Contract Amount</b>			
<b>Agency/Owner Contact to Verify (Name/ Tel.)</b>			

NOTE: ANY "YES" ANSWERS BELOW MUST BE FULLY EXPLAINED ON A SEPARATE SHEET OF PAPER AND ATTACHED TO THIS APPLICATION.

B. Is the Applicant Firm currently certified by the California Department of Transportation (Caltrans) as a disadvantaged business entity, minority-, or woman-owned business?  
 No  Yes

C. During the past five years, has Applicant Firm or any of its Key Persons had any certificates or certifications revoked or suspended, including disadvantaged-, minority-, or woman-owned business certifications?  
 No  Yes

In the past five years has the Applicant Firm or any Affiliate been the subject of any of the following actions?

D. Been suspended, debarred, disqualified, or otherwise declared ineligible to bid?  
 No  Yes

E. Failed to complete a contract for a commercial or private owner?  
 No  Yes

F. Been denied a low-bid contract in spite of being the low bidder?  
 No  Yes

G. Had a contract terminated for any reason, including default?  
 No  Yes

H. Had liquidated damages assessed against it during or after completion of a contract?  
 No  Yes

## SECTION IV: CIVIL ACTIONS

If "Yes" to Sections IV, V or VI, provide details including a brief summary of cause(s) of action, indicate if Applicant Firm, Key Person or Affiliate Firms were plaintiffs (P) or defendants (D); define charges explicitly, by what authority, court or jurisdiction, etc. In the case of tax liens, please indicate whether the liens were resolved with the tax authorities. Please submit proof of payment or agreements to pay the liens.

**Complete details are required!**

### 1. **Violations of Civil Law**

In the past five years has Applicant Firm, any of its Key Persons, or any Affiliate been the subject of an investigation of any alleged violation of a civil antitrust law, or other federal, state or local civil law?

No

Yes

### 2. **Lawsuits with Public Agencies**

At the present time is, or during the past five years has, the Applicant Firm, any of its Key Persons, or any Affiliate been a plaintiff or defendant in any lawsuit regarding services or goods provided to TAMC or to a public agency?

No

Yes

### 3. **Bankruptcy**

During the past five years, has the Applicant Firm or any Affiliate filed for bankruptcy or reorganization under the bankruptcy laws?

No

Yes

### 4. **Judgments, Liens and Claims**

During the past five years, has the Applicant Firm been the subject of a judgment, lien or claim of \$25,000 or more by a subcontractor or supplier?

No

Yes

### 5. **Tax Liens**

During the past five years, has the Applicant Firm been the subject of a tax lien by federal, state or any other tax authority?

No

Yes

## SECTION V: COMPLIANCE WITH LAWS AND OTHER REGULATIONS

### 1. Criminal

In the past five years has the Applicant Firm, any of its principals, officers, or Affiliates been convicted or currently charged with any of the following:

A. Fraud in connection with obtaining, attempting to obtain, or performing a public contract, agreement or transaction?

No  Yes

B. Federal or state antitrust statutes, including price fixing collusion and bid rigging?

No  Yes

C. Embezzlement, theft, forgery, bribery, making false statements, submitting false information, receiving stolen property, or making false claims to any public agency?

No  Yes

D. Misrepresenting minority or disadvantaged business entity status with regard to itself or one of its subcontractors?

No  Yes

E. Non-compliance with the prevailing wage requirements of California or similar laws of any other state?

No  Yes

F. Violation of any law, regulation or agreement relating to a conflict of interest with respect to a government funded procurement?

No  Yes

G. Falsification, concealment, withholding and/or destruction of records relating to a public agreement or transaction?

No  Yes

H. Violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction?

No  Yes

I. Do any Key Persons in Applicant Firm have any felony charges pending against them that were filed either before, during, or after their employment with the Applicant Firm?

No  Yes

## 2. Regulatory Compliance

In the past five years, has Applicant Firm, any of its Key Persons, or Affiliates:

- A. Been cited for a violation of any labor law or regulation, including, but not limited to, child labor violations, failure to pay wages, failure to pay into a trust account, failure to remit or pay withheld taxes to tax authorities or unemployment insurance tax delinquencies?  
 No  Yes
- B. Been cited for an OSHA or Cal/OSHA “serious violation”?  
 No  Yes
- C. Been cited for a violation of federal, state or local environmental laws or regulations?  
 No  Yes
- D. Failed to comply with California corporate registration, federal, state or local licensing requirements?  
 No  Yes
- E. Failed to comply with California corporate registration, federal, state or local licensing requirements?  
 No  Yes
- F. Had its corporate status, business entity’s license or any professional certification, suspended, revoked, or had otherwise been prohibited from doing business in the State of California, in the last three years?  
 No  Yes
- G. During the past five years, has Applicant Firm or any of its Key Persons had any certificates or certifications revoked or suspended, including disadvantaged-, minority-, or woman-owned business certifications?  
 No  Yes
- H. Been suspended, debarred, disqualified, or otherwise declared ineligible to bid?  
 No  Yes

## SECTION VI: ETHICS

### 1. Conflict of Interest

A. Does the Applicant Firm or any of its Key Persons have any existing relationships that could be construed as either personal or organizational conflicts of interest, or which would give rise to a conflict if Applicant Firm should be a recipient of a contract with TAMC?

No  Yes

B. Has any Owner, Key Person or Project Team member of Applicant Firm ever (if yes, explain fully):

a. Been an employee of TAMC, or served as a member of TAMC Board of Directors or as an Alternate?

No  Yes

b. Been related by blood or marriage to an TAMC employee, TAMC Board member or Alternate?

No  Yes

### 2. Political, Charitable, And Other Contributions

Has the Applicant Firm, any of its Key Persons, or Affiliates ever, regardless of amount:

A. Given (directly or indirectly), or offered to give on behalf of another or through another person, money, contributions (including political contributions), or other benefits, to any current TAMC Board Member or Alternate?

No  Yes

B. Given, or offered to give on behalf of another, money, contributions, or other benefits, directly or indirectly, to any current or former TAMC employee?

No  Yes

C. Been directed by any TAMC employee, Board member or Alternate Board member, or contractor to offer or give money, contributions or other benefits, directly or indirectly, to any current or former TAMC employee, Board member or alternate Board member?

No  Yes

D. Directed any person, including employees or subcontractors, to give money, contributions or other benefits, directly or indirectly, to any current or former TAMC employee, Board member, Alternate Board member, or to someone else in order to benefit an TAMC employee, Board member, or Alternate Board member?

No  Yes

E. Been solicited by any TAMC employee, Board member, or Alternate Board member to make a contribution to any charitable nonprofit organization?

No  Yes

IF YES TO ANY OF THE ABOVE, SUBMIT LIST OF CONTRIBUTIONS AND DETAILS.

## **SECTION VII: ADDITIONAL DOCUMENTATION REQUIRED**

**Copies of the following documents are to be submitted with this application:**

1. Applicant Firm's Current Local Business Licenses, if required by city, county or state, and
2. Applicant Firm's Financial Statements:
  - A. PUBLICLY TRADED COMPANIES: Financial information will be accessed on-line. However, if additional information is needed, it will be specifically requested from the firm.
  - B. NON-PUBLICLY TRADED COMPANIES WITH AUDITED OR REVIEWED FINANCIAL STATEMENTS: Statements, including balance sheet, statement of earnings and retained income, with footnotes, for the most recent three years.
  - C. NON-PUBLICLY TRADED COMPANIES WITHOUT AUDITED OR REVIEWED FINANCIAL STATEMENTS: Company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years. The Chief Financial Officer of the corporation, a partner, or owner, as appropriate, must certify these financial statements.
  - D. SOLE PROPRIETORSHIPS: Refer to C. If financial statements are not generated, please fill out and sign the Financial Statement form. Submit one form for each of the most recent three years.

**NOTE: TAMC reserves the right to ask for additional documentation if it is reasonably required to make a determination of integrity and responsibility relevant to the goods or services the Applicant Firm will provide to TAMC if awarded a contract.**

### Financial Statement

**This information is provided for pre-qualification purposes only. This document is considered a confidential document not subject to public disclosure under California law.**

To be completed by Applicant Firms that do not produce company generated financial statements, including balance sheet, statement of earnings and retained income for the most recent three years (one sheet per year.)

<b>ASSETS</b>	
Cash on Hand and in Banks	\$
Account and Notes Receivable	\$
Fixed Assets (net of depreciation)	\$
Other Assets	\$
<b>Total Assets</b>	<b>\$</b>
<b>LIABILITIES</b>	
Accounts Payable	\$
Notes Payable to Banks (in next 12 months)	\$
Notes Payable to Others	\$
Taxes Payable	\$
Long Term Liabilities (more than 12 months)	\$
Other Liabilities	\$
<b>Total Liabilities</b>	<b>\$</b>
<b>Net Worth</b>	<b>\$</b>
<b>INCOME FROM OPERATIONS</b>	
Revenue	\$
Interest from Bank Accounts	\$
Cost of Goods Sold (if appropriate)	\$
Gross Profit	\$
General & Administrative Expenses	\$
Depreciation	\$
Interest Paid	\$
<b>Net Gain or Loss</b>	<b>\$</b>

I hereby certify that the above information is true and accurate to the best of my knowledge and belief. I understand false statements may result in denial of pre-qualification, and possible debarment for a period of five years.

\_\_\_\_\_  
 Signature of Owner or Officer

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 Company Name

\_\_\_\_\_  
 For the Year Ended

\_\_\_\_\_  
 Federal ID #

## Exhibit C

### Sample Cost Recovery Agreement

**ADVANCE FUNDING AGREEMENT BETWEEN  
[PROPOSER]  
AND THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY  
FOR NEGOTIATION AND REVIEW SERVICES FOR THE  
[PROPOSAL]**

**THIS ADVANCE FUNDING AGREEMENT** (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_ (the "Execution Date") by and between the Transportation Agency for Monterey County ("TAMC") and \_\_\_\_\_, a \_\_\_\_\_ company ("Proposer"), with regard to Proposer's unsolicited proposal generally to \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ (the "Proposal"). The Proposer and TAMC may each be referred to herein as a "Party" or collectively as the "Parties".

#### **RECITALS**

WHEREAS, the Proposer has submitted a proposal to do the following: \_\_\_\_\_ (hereinafter, the "Proposal"); and

WHEREAS, TAMC has indicated a desire to further explore and/or negotiate an agreement regarding the Proposal, even though the Proposal is not within the currently adopted budget or overall work program; and

WHEREAS, the intent of this Agreement is to provide funding to TAMC for certain reasonable and necessary costs of TAMC staff and consultants in providing services for the timely review, processing, and administration during the negotiating of the Proposal; and

WHEREAS, a fundamental premise of this Agreement is that nothing is to be construed as a representation, promise, or commitment on the part of TAMC to give special treatment to, or exercise its discretion favorably with regard to the Proposal, in exchange for Proposer's obligation to advance costs incurred during the negotiation process;

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, TAMC AND PROPOSER AGREE AS FOLLOWS:**

1. **Funding Obligation**

- 1.01. Proposer agrees to advance funds to TAMC in the time and manner, and subject to the conditions, set forth in this Agreement, for Administrative Costs (as described below) incurred on and after \_\_\_\_\_, 20\_\_, and reasonably related to carrying out the responsibilities of the negotiation process. Administrative Costs include but are not limited to all costs reasonably incurred by TAMC (including costs of consultants pertaining thereto, pursuant to Section 1.02) in undertaking Negotiation Services ("Services"), which include but are not limited to:

- i. Project coordination with the Proposer and their consultants, and other relevant parties;
- ii. Internal coordination between and among TAMC and its consultants engaged to provide staff support services facilitating the negotiation process;
- iii. Coordination with other interested agencies/departments including local, state and federal governmental entities and special districts; and
- iv. Review and evaluation of project plans, reports and financial documents as submitted by the Proposer as part of the negotiation process. Preparation of memos, agendas, staff reports and other materials as necessary for public meetings, including, but not limited to: the TAMC Executive Committee, TAMC Board of Directors.

1.02 TAMC shall provide Proposer a copy of any proposed consultant agreement prior to entry, for review and comment.

## 2. Payment of Funds

Upon approval of this Agreement and execution hereof by the authorized representatives of the Parties, the Proposer will deposit \_\_\_\_\_ Dollars (\$\_\_\_\_\_) into a special fund to be established and maintained by TAMC, and to be known as the “\_\_\_\_\_ Negotiation Services Fund.” TAMC is authorized to disburse amounts from said fund, from time to time, to pay for incidental costs and expenses incurred by TAMC and their consultants in connection with the Services for the Proposal. In the event that the balance in said fund is drawn down to an amount of less than \$\_\_\_\_\_, TAMC may notify the Proposer of such fact, and the Proposer shall provide TAMC with an additional deposit of \$\_\_\_\_\_ to assure the continued availability of funds for the payment of such Services. Provided, however, that once the initial deposit of \$\_\_\_\_\_ has been expended, any further expenditures under this Agreement shall be borne equally between Proposer and TAMC, such that TAMC shall be responsible for payment of one-half of any costs incurred under this Agreement beyond the initial deposit, up to the amount of \$\_\_\_\_\_. In consideration of the agreements expressed herein on the potential sharing of costs, TAMC may retain any unexpended funds from the initial deposit. In the event that additional deposits are necessary beyond the initial deposit, any unexpended amounts of such additional deposits shall be returned to Proposer, consistent with Section 7 (Termination).

## 3. Review of Costs

3.01. TAMC recognizes that Proposer has an interest in ensuring that costs incurred by TAMC pursuant to this Agreement are reasonable. Accordingly, TAMC shall monitor the incurring of Negotiation Services costs, including the work of consultants, with the objective of avoiding unnecessary or duplicative costs of staff or consultants, and providing for cost effective performance under consultant contracts. Further, the Parties shall conduct their respective negotiations in a manner that does not place undue burdens on any other Party,

which might otherwise require the use of outside consultants due to time constraints or workload burdens.

- 3.02. At the request of any Party to this Agreement, and in any event not less than quarterly during a Fiscal Year, TAMC, in consultation with the Proposer, shall review the costs incurred and anticipated costs to be incurred within such Fiscal Year.
- 3.03. Proposer recognizes that ability to carry out the activities referenced in Section 1 on the part of TAMC is contingent on timely provision of funds as provided for in this Agreement.
- 3.04. The Parties agree that the costs to be reimbursed by Proposer pursuant to this Agreement shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) without amendment of this Agreement (hereinafter, the "Cost Cap"). Provided however, that Proposer expressly acknowledges that TAMC has no obligation to continue to negotiate modifications in the event that the Cost Cap is reached without the prior approval of an amendment to this Agreement.

#### 4. Procedures

- 4.01. Submission and Payment of TAMC Invoices. Within forty-five (45) days of the end of each calendar quarter in a Fiscal Year ("Quarterly Billing Period") TAMC shall prepare and provide the Proposer with a notice of the amount billed ("Billing Notice") for such Quarterly Billing Period which sets forth the expenses of TAMC for reimbursable costs (including costs of consultants) incurred in such Quarterly Billing Period. The Billing Notice shall set forth the amounts claimed and paid from the deposit set forth in Section 2.01, together with such supporting documentation as the Proposer may reasonably request. The Billing Notice shall include staff expenses and the costs of consultants, the costs of which may be billed separately (without limiting TAMC's ability to redact billings as appropriate pursuant to the attorney client and attorney work product privileges). TAMC shall submit the Billing Notice to the Proposer by the forty-fifth (45th) day following the end of each Quarterly Billing Period. Proposer shall review the Billing Notice and identify any disputed amounts, pursuant to Section 4.02
- 4.02. Payment Dispute. If Proposer takes exception to any amount identified in a Billing Notice under this Agreement, Proposer shall, within twenty (20) days after Proposer has received the Billing Notice in dispute, deliver to TAMC a written notice of protest explaining the basis for the dispute. The Parties shall promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such dispute until the Parties have met and attempted in good faith to resolve the dispute for not less than 30 days. Upon the resolution of the dispute, the amount, if any, which was determined to be erroneously charged against the deposit shall be replaced by the TAMC, as appropriate. If the amount(s) disputed by Proposer are unresolved for longer than 30 days, and if the disputed amount is found to be proper, Proposer shall pay interest on the disputed amount at the lesser rate of 5% per annum or the maximum rate permitted by law, from the date of Proposer's notice of disputed amount to the date of resolution, to TAMC. The existence of a dispute over any

portion of a Billing Notice does not relieve Proposer of its obligation to increase deposits, as set forth in Section 2.01.

5. No Promise or Representation

Proposer and TAMC agree that nothing in this Agreement is to be construed as a representation, promise, or commitment on the part of TAMC to give special treatment to, or exercise its discretion favorably for, the Proposal or Proposer.

6. Term

This Agreement shall be effective from the Effective Date of this Agreement through \_\_\_\_\_, 20\_\_\_, unless extended by mutual consent of the Parties.

7. Termination

Either Party may terminate this Agreement before the expiration of the Term by providing not less than five (5) business days' notice, in order to minimize the incurring of additional costs. In the event of termination under this Section 7, TAMC shall be entitled to charge all costs incurred up to the effective date of termination, subject to Section 4.02, and Proposer shall not request refund of any funds remaining in the deposit for a period of 90 days, so as to allow the invoicing and payment of all outstanding charges due under this Agreement, as well as pay for any work performed by outside consultants through the effective date of termination. In the event of termination by Proposer, TAMC is released of any obligations created by this Agreement.

8. Indemnification

The Proposer shall defend, indemnify, and hold harmless TAMC from and against any and all claims, liabilities, or losses in any action brought by any third party challenging the validity of this Agreement or the authority of TAMC to enter into this Agreement. This indemnification shall survive termination of this Agreement.

9. Assignment

The Proposer shall not assign, sell, mortgage, hypothecate or otherwise transfer its obligations under this Agreement except as part of a financial transaction or transfer to a transferee or assignee as permitted under or as otherwise approved in writing by TAMC. This Agreement and the rights, privileges, duties, and obligations of the Parties hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective, successors and permitted assigns.

10. Amendment

This Agreement may be amended or modified only by an instrument in writing signed by all the Parties hereto.

11. Waiver

With the exception of the time to dispute any Billing Notice, as set forth in Section 4.02, the failure of a Party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a Party of any condition or of any breach of any term contained in this Agreement

shall be effective unless in writing and signed by the Parties hereto, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in any other instance or a waiver of any other condition or breach of any other term.

12. Governing Law

This Agreement shall be construed, interpreted and governed by the laws of the State of California, without regard to conflicts of law principles.

13. Negotiated Agreement

The Parties acknowledge that each Party has reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of the Agreement.

14. Relationship of Parties

This Agreement establishes only a funding and reimbursement arrangement between the Parties, and nothing in this Agreement establishes a partnership or joint venture among the Parties.

15. Notices

Notice to the Parties in connection with this Advanced Funding Agreement shall be given personally, by email or by first class, certified, or registered mail, or by an express mail delivery service addressed as follows (except as any Party may otherwise direct in writing to the other Parties):

TO TAMC:

Debra L. Hale, Executive Director  
Transportation Agency for Monterey County  
55-B Plaza Circle  
Salinas, CA 93901  
[debbie@tamcmonterey.org](mailto:debbie@tamcmonterey.org)

TO PROPOSER:

Notice shall be deemed effective at the time of personal delivery, five days after the notice is deposited in the United States registered or certified mail, properly addressed, with postage prepaid, or on the day of delivery if notice is sent by express mail delivery service.

16. Entire Agreement

This Agreement constitutes the entire agreement between Proposer and TAMC respecting the advancement and reimbursement of funds for Negotiation Services and shall supersede all prior negotiations, representations or agreements, either written or oral, among the Parties with respect to this issue. TAMC and Proposer each represent that neither has relied on any promise, inducement, representation, or other statement made in connection with this Agreement that is not expressly contained herein.

IN WITNESS WHEREOF, TAMC and Proposer have executed this advance funding Agreement as of the day and year written below.

TAMC

[PROPOSER]

By: \_\_\_\_\_  
Debra L. Hale  
Executive Director

By: \_\_\_\_\_  
Name:  
Title:

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

Dated: \_\_\_\_\_

INSTRUCTIONS: If Consultant is a corporation (including limited liability and nonprofit corporations), the full legal name of the corporation shall be set forth together with the signatures of two specified officers. If Consultant is a partnership, the name of the partnership shall be set forth together with the signature of a partner with authority to execute this Agreement on behalf of the partnership. If Consultant is contracting in an individual capacity, the individual shall set forth the name of his or her business, if any, and shall personally sign the Agreement.

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Approved as to form:

\_\_\_\_\_  
TAMC Counsel

Dated: \_\_\_\_\_

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