

**TRI-VALLEY TRANSPORTATION COUNCIL  
RESOLUTION NO. 2018-01**

**A RESOLUTION APPROVING THE PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE TRI-VALLEY TRANSPORTATION COUNCIL AND  
PLANETERIA MEDIA**

**WHEREAS**, on September 10, 2014, the Tri-Valley Transportation Council (TVTC) issued a request for proposals (RFP) from qualified website development firms and designers to design and develop the new TVTC website, infrastructure that allows member agencies to have "members only" access and administrative rights, and hosting of the TVTC website; and,

**WHEREAS**, pursuant to the RFP, TVTC and Planeteria Media (Contractor) entered into a Professional Services Agreement ("Agreement") whereby Contractor agreed to provide website development services and monthly technical support services to TVTC; and

**WHEREAS**, the Agreement provided that TVTC would pay Contractor a not to exceed amount of \$10,000 for website development services and \$125 per month in monthly technical support services once the website was online and operational; and

**WHEREAS**, TVTC and Contractor now desire to enter into an Agreement exclusively for website content management and hosting services, and website support services in an amount not to exceed \$4,500.

**NOW THEREFORE BE IT RESOLVED THAT TVTC:**

1. Approves the form of THE PROFESSIONAL SERVICES AGREEMENT and authorizes TVTC Administrator to make any minor modifications subject to review and approval of the General Counsel that do not expand TVTC's obligations thereunder, attached hereto and incorporated herein as Attachment 1; and
2. Authorizes the Chairperson to execute the Agreement on behalf of TVTC subject to review and approval as to form by the General Counsel.

**PASSED, APPROVED AND ADOPTED** at the meeting of January 22, 2018, by the following votes:

**AYES:** 7 (Spedowfski, Perkins, Biddle, Stepper, Olson, Haggerty, Anderson)  
**NOES:** 0  
**ABSENT:** 0  
**ABSTAIN:** 0



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Steven Spedowfski, Chair  
Tri-Valley Transportation Council

**ATTEST:**



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Debbie Bell, TVTC Administrative Staff

**ATTACHMENT 1**  
**PROFESSIONAL SERVICES AGREEMENT**

# WEBSITE HOSTING CONSULTANT SERVICES AGREEMENT

The Tri-Valley Transportation Council, a joint powers authority formed under the Joint Exercise of Powers Act (Gov. Code §§ 6500 *et seq.*) ("TVTC") and Planeteria Media, a professional website design, development, and implementation company, ("Consultant"), hereby agree as follows:

**1. Scope of Work:** Consultant shall provide the following services ("Work") website content management and hosting services, conversion and migration services, and website support services for TVTC. The scope of the work for Consultant is more specifically described in **Exhibit A** of this Agreement. Consultant will start working on this project within 1 day after Consultant receives a signed copy of this Agreement. If the scope of work changes after signing this Agreement, TVTC and Consultant agree to negotiate and sign an amended **Exhibit A**.

**2. Term:** The term of this Agreement shall begin on January 22, 2018 and continues until June 30, 2020.

**3. Compensation Rate:** TVTC shall pay Consultant an amount not to exceed four thousand five hundred dollars (\$4,500) for the full and satisfactory completion of the Work in accordance with the terms of this Agreement. The rate of compensation shall be calculated as follows: \$125 per month in monthly technical support services, \$49 per year for website domain renewal, and \$150 per year for the Secure Sockets Layer certificate and installation as described in the Consultant's Proposal dated August 7, 2017 ("Proposal") and as further described in **Exhibit A** attached hereto and by this reference made a part hereof. In the event of a conflict or inconsistency between the text of the main body of this Agreement and Proposal or the Exhibits, the text of the main body of this Agreement shall prevail. Amounts approved for any additional length of time beyond this Agreement are subject to the limits of Paragraph H, subpart 3 of the Tri-Valley Transportation Council Bylaws.

**4. Original Work/Conflicts/Confidentiality:** Consultant promises that work does not violate the patent, copyright, trade secrets or other property right of any person, firm or entity. Consultant promises that this Agreement does not conflict with any other contract, agreement or understanding to which Consultant is a party. Finally, Consultant promises to hold and maintain in strict confidence any confidential information that TVTC provides (such as proprietary technical or business information), and Consultant will not disclose such information to any third party except as may be required by a court or governmental authority.

**5. Payment:** TVTC promises to pay Consultant the amounts outlined in Section 3 above for the work satisfactorily performed in accordance with the terms of this Agreement. The billing statements should be provided on approximately a monthly basis (or as otherwise agreed to in writing by the Consultant and TVTC) detailing each person performing service and a brief description of the work performed. Payment will be made using check, cashier's check, or wire transfer. All billing statements should be directed to the TVTC Administrator for review and approval.

**6. Feedback and Acceptance:** TVTC agrees to give Consultant timely feedback so that Consultant can understand and incorporate TVTC concerns, objections or corrections, and TVTC promises not to unreasonably withhold acceptance of the deliverables Consultant will provide TVTC.

Consultant and TVTC agree to the Work acceptance process outlined in **Exhibit A**. In turn, TVTC promises to evaluate the contract deliverables listed in **Exhibit A** to this Agreement. If TVTC rejects a deliverable, Consultant will correct any errors and ask TVTC to accept or reject the corrected deliverable – which TVTC promises to do within reasonably timely manner after TVTC receives the corrected deliverable.

**7. Rights To The TVTC Content:** TVTC promises that: (a) Consultant has the right to use anything TVTC gives Consultant ("TVTC Content") for purposes of work as part of this contract; and (b) using such TVTC Content does not violate the patent, copyright, trade secret or other property right of any person, firm or entity. TVTC grants Consultant a nonexclusive, nontransferable license to use, reproduce, modify, display and publish the TVTC Content solely in connection with Consultant's work for TVTC under this Agreement. TVTC also affirms and represents that this Agreement does not conflict with any other contract, agreement or understanding to which TVTC is a party.

**8. Materials Created as Part of Consultant's Performance:** All content, including but not limited to, reports, data, maps, graphics, models, charts, photographs, plans, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the TVTC. Consultant hereby agrees to deliver those documents, and any other documents or materials necessary to keep the website/content fully functional, to the TVTC upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the TVTC and are not necessarily suitable for any future or other use.

**9. Termination:** TVTC may terminate or suspend this Agreement at any time and without cause upon written notification to Consultant. Upon receipt of notice of termination or suspension, Consultant shall immediately stop all work in progress under this Agreement. TVTC's right of termination shall be in addition to all other remedies available under law to the TVTC

**10. Indemnification:** To the fullest extent permitted by law, Consultant shall indemnify, defend (with counsel acceptable to TVTC), and hold harmless the TVTC and its elected and appointed officers, officials, employees, agents, contractors and consultants (collectively, the "TVTC Indemnitees") from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorneys' fees and costs of litigation) (collectively, "Liability") of every nature to the extent arising out of or in connection with Consultant's negligent performance of the Work or Consultant's failure to comply with this Agreement, except such Liability caused by the gross negligence or willful misconduct of the TVTC Indemnitees.

**11. Insurance:** Prior to beginning the Work and continuing throughout the term of this Agreement, Consultant (and any subcontractors) shall, at Consultant's (or subcontractor's) sole cost and expense, furnish TVTC with certificates of insurance evidencing that Consultant has obtained and maintains insurance in the following amounts:

A. Workers' Compensation that satisfies the minimum statutory limits.

B. Commercial General Liability and Property Damage Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, TWO MILLION DOLLARS (\$2,000,000) annual aggregate, for bodily injury, property damage, products, completed operations and contractual liability coverage. The policy shall also include coverage for liability arising out of the use and operation of any TVTC-owned or TVTC-furnished equipment used or operated by the Consultant, its personnel, agents or subcontractors.

C. Comprehensive automobile insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury and property damage including coverage for owned and non-owned vehicles.

All insurance policies shall be written on an occurrence basis and shall name the TVTC Indemnitees as additional insureds with any TVTC insurance shall be secondary and in excess to Consultant's insurance. If the Consultant's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible. The certificates shall contain a statement of obligation on the part of the carrier to notify TVTC of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal. TVTC's Risk Manager may waive or modify any of the insurance requirements of this section.

**12. Compliance with all Applicable Laws; Nondiscrimination:** Consultant shall comply with all applicable local, state and federal laws, regulations and ordinances in the performance of this Agreement. Consultant shall not discriminate in the provision of service or in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any applicable local, state or federal laws or regulations.

**13. Severability:** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

**14. Entire Agreement:** This Agreement constitutes the complete and exclusive agreement between TVTC and Consultant concerning the work on this project, and it supersedes all other prior agreements, proposals, and representations, whether stated orally or in writing. Consultant and TVTC can modify this agreement in writing, if both TVTC and Consultant sign that modification.

**15. Independent Contractor:** TVTC agrees that Consultant is an independent contractor and not TVTC's employee. Although TVTC will provide general direction to Consultant, Consultant will determine, in Consultant's sole discretion, the manner and ways in which Consultant will provide website content management and hosting services, conversion and

migration services, and website support services for TVTC. The work that Consultant creates for TVTC under this Agreement will not be deemed a "work-for-hire," as that term is defined under U.S. Copyright Law. Whatever rights Consultant grants TVTC are contained in this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written below.

**TRI-VALLEY TRANSPORTATION COUNCIL**

DATED: 1-22-18

By   
Steve Spedowski, TVTC Chair

**PLANETERIA MEDIA, CONTRACTOR**

DATED: 1/22/18

By   
Consultant, Planetaria Media  
(Authorized Executive of Company)

**APPROVED AS TO FORM**

DATED: 1-22-18

By   
for Steven Mattas, Legal Counsel  
Meyers Nave

## **Exhibit A – Scope of Work and Compensation**





## **Website Hosting and Maintenance for TVTC website**

August 7, 2017

Dear Debbie,

It has been our pleasure to be associated with TVTC in the development and maintenance of the TVTC website. We look forward to continue working with you and your team for the maintenance and hosting of the customized website which was developed by on Kentico Content Management platform.

Following is our proposal:

### **Services to be performed by Planeteria:**

#### **1. Hosting**

Planeteria will host the customers website on its shared webserver. This includes the following:

- 100% Uptime Guarantee
- Unlimited incoming bandwidth
- 20TB Outbound Bandwidth
- 24x7x365 Support
- 1 Hour Hardware Replacement Guarantee
- Standard Daily backups

This includes the EVault Backup and Recovery Solution which safeguards the servers, maintains uptime and guarantees the full recovery of all essential data and applications with Managed Backup Services.

Managed Backup reduces risk and minimizes cost by:

- Best practices in automatic backups, online access and point-in-time recovery
- Multiple layers of security ensure data integrity and immediate availability
- Scalable solutions that grow with your data management needs
- Customizable data monitoring and disaster recovery for all environments

All the data on the server is secure.



- Secure Sockets Layer certificate and installation

## **2. Website Maintenance**

A) Planeteria will perform minor website updates/enhancements or bug fixes based on client request. This includes:

i) Any type of bug fix (irrespective of the time taken to fix it) required to maintain the website functionality

ii) Any website change request that will take less than 30 min to do.

There is no limit to the number of such requests submitted in a month.

All requests should be sent to the Planeteria support email – [support@planeteria.com](mailto:support@planeteria.com) and a support ticket will be generated. The request will be reviewed, and if its a fix, it will be done at the earliest. Updates will be scheduled and done at the earliest.

If the estimated effort is more than 30 min, an estimate for additional cost will be provided to the client for approval before the changes are done.

B) Planeteria will promptly do all necessary security upgrades on the website to ensure security and availability of the website.

C) 24/7 monitoring website for uptime. And investigate if the website is down. If website gets hacked, remove malicious code and restore the website.

D) On request, Planeteria will provide any website analytics that may be required for monitoring and promoting the website or for management reporting. There is no limit to the number of such requests and Planeteria will provide the reports in a timely manner.

E) The domain name tvtc-jpa.com will be renewed annually when its due for renewal

### **Monthly Hosting Fee:**

\$125 per month for hosting & maintenance + \$49/per year for domain renewal + \$150/year for SSL certificate and installation



**Contract Duration:**

24 months. To be renewed every 2 years.

Let us know if you have any questions.

Warm regards

A handwritten signature in black ink, appearing to read 'Sandeep'.

Sandeep Mehta, CTO