

TRI-VALLEY TRANSPORTATION COUNCIL

TRI-VALLEY TRANSPORTATION COUNCIL RESOLUTION NO. 2024-05

A RESOLUTION APPROVING THE PROFESSIONALSERVICES AGREEMENT BETWEEN THE TRI-VALLEY TRANSPORTATION COUNCIL AND CROPPER ROWE, LLP FOR AUDIT SERVICES

WHEREAS, in November 2023, the Tri-Valley Transportation Council (TVTC) released a Request for Proposals for Audit Services with a deadline to receive the proposals by January 19, 2024; and

WHEREAS, pursuant to the RFP, TVTC received one proposal from Cropper Rowe, LLP (Cropper), outlining their qualifications and ability to ability to perform TVTC's required audits; and,

WHEREAS, staff believes Cropper's proposal meets TVTC's needs and recommends awarding a Professional Services Agreement ("Agreement") for Audit Services to Cropper and approve the form of said Agreement attached hereto and incorporated herein as Attachment 1; and,

NOW THEREFORE BE IT RESOLVED THAT the Tri-Valley Transportation Council approves the Agreement with Cropper and authorizes the TVTC Chair to execute the Agreement on behalf of the TVTC subject to review and approval as to form by the General Counsel.

PASSED, APPROVED, AND ADOPTED at the meeting of January 29, 2024 by the following votes:

AYES: Josey, Morgan, Perkins, Testa, Haubert and Andersen

NOES:

ABSENT: Kiick

ABSTAIN:

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Jean Josey, Chair
Tri-Valley Transportation Council

ATTEST:

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Sai Midididdi, TVTC Administrative Staff

TRI-VALLEY TRANSPORTATION COUNCIL

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE TRI VALLEY TRANSPORTATION COUNCIL (“TVTC”) AND CROPPER ROWE, LLP FOR AUDITING SERVICES

This is an agreement between the Tri Valley Transportation Council, hereinafter referred to as “TVTC,” and Cropper Rowe, LLP hereinafter referred to as “CONTRACTOR,” for Auditing Services.

WHEREAS, TVTC desires to secure professional Auditing Services and CONTRACTOR is qualified and willing to provide such professional assistance.

NOW, THEREFORE, TVTC and CONTRACTOR agree as follows:

1. **Scope of Service.** CONTRACTOR shall provide TVTC with financial audit services and corresponding audit reports (“Work”). An outline of the scope of services for the Work including mandatory timeframes for performance, deadlines for providing deliverables to TVTC, and the maximum fee for each item under this Agreement is attached hereto as Exhibit A and incorporated herein (“Scope of Services”).

CONTRACTOR shall comply with specific standards or governmental requirements applicable to specific tasks hereunder or as may be necessary to enable CONTRACTOR to express the opinions required hereunder.

2. **Modification of Agreement.** The TVTC may request changes to this Agreement including to the Scope of Services to be performed by CONTRACTOR. Such requests shall be made in writing exclusively by the TVTC Chair, and shall describe in detail the proposed additions, deletions, or modifications. Such requests will include tabulation of costs, expenses, and time required to complete the requested additional work. Neither TVTC’s request nor CONTRACTOR’S reply shall constitute a modification of this Agreement. Any modification shall be contained in a written amendment to the Agreement and will be effective only if signed by both parties. Execution of the Amendment by the TVTC shall constitute authorization to proceed with the additional work identified in the request.

- 3. Time of Performance.** CONTRACTOR'S performance shall begin on July 1, 2024 and be completed by June 30, 2026. CONTRACTOR may commence work as of the date authorized by the TVTC Technical Advisory Committee ("TVTC TAC"), which date may be prior to execution of this Agreement. The parties may agree to two one-year extensions of the term of this Agreement.

However, CONTRACTOR is under no obligation to commence work hereunder prior to execution of this Agreement.

- 4. Compensation.** TVTC agrees to pay CONTRACTOR at the rates set forth in Exhibit A, and incorporated herein, in a sum not to exceed TEN THOUSAND TWO HUNDRED FIFTY DOLLARS (**\$10,250**).

Upon completion and acceptance of the deliverables CONTRACTOR shall submit an itemized invoice for the completed work showing applicable rates and charges as agreed to hereunder and the total amount due. CONTRACTOR shall submit invoices within forty-five (45) days from the completion of the final audit report.

- 5. Extension.** TVTC has the option to request two (2) one-year extensions to this Agreement to provide for two subsequent financial audits. In the event that TVTC requests such an extension or extensions and CONTRACTOR agrees to accept such extension, TVTC shall pay CONTRACTOR for any subsequent audits at the extension term rates set forth in Exhibit B, attached hereto and incorporated herein. Such extension must be memorialized in a writing signed by both parties.

- 6. Cooperation of TVTC.** TVTC shall make available to CONTRACTOR all financial records and related information necessary for performance of CONTRACTOR'S work under this Agreement.

- 7. Independent Contractor.** CONTRACTOR is an independent CONTRACTOR and shall not for any purpose be deemed to be an employee, agent, or other representative of TVTC. Services called for herein shall be deemed to be unique. CONTRACTOR shall not assign, sublet, transfer, or otherwise substitute its interest in this Agreement, or any of its obligations hereunder, without the prior written consent of the TVTC.

- 8. Proprietary or Confidential Information.** CONTRACTOR understands and agrees that, in the performance of the work under this Agreement or in contemplation thereof, CONTRACTOR may have access to private or confidential information owned or controlled by TVTC. Such information may contain proprietary or confidential details, the disclosure of which may be damaging to TVTC or to third parties.

CONTRACTOR agrees that all information disclosed to CONTRACTOR by TVTC shall be held in confidence and used only in performance of this Agreement. CONTRACTOR shall exercise the same standard of care to protect such information, as a reasonably prudent businessperson would use to protect its own proprietary or confidential information.

9. **Work Product.** Under AICPA auditing standards, the work product of CONTRACTOR is the property of the CONTRACTOR. However, copies of such work product shall be provided to TVTC and to authorized regulatory agencies upon written request..
10. **Final Work Product.** Under AICPA auditing standards, the work product of CONTRACTOR is the property of the CONTRACTOR. However, copies of such work product shall be provided to TVTC and to authorized regulatory agencies upon written request..
11. **Records of Contractor.** CONTRACTOR shall maintain records prepared under this Agreement and full documentation of performance hereunder. CONTRACTOR shall permit TVTC to have access to those records for the purpose of making an audit, examination, or review of financial and performance information relating to this Agreement. CONTRACTOR shall maintain such records for a minimum of seven (7) years following payment by TVTC for the last invoice for such services to be provided.
12. **Nondiscrimination.** CONTRACTOR represents that it does not and agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, age, sexual preference, national origin, disability or other condition protected by law.
13. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless the TVTC, its officers and employees, from and against any and all claims, demands, liability, costs, and expenses of whatever nature, including court costs and attorney fees, arising out of or resulting in any manner from the willful misconduct, negligent acts, errors or omissions, of CONTRACTOR, its subcontractors, agents, employee, licensees, or guests in the making or performance of this Agreement.

CONTRACTOR shall hold TVTC harmless and defend any suit or other proceedings brought by CONTRACTOR'S employees, contractors and/or agents, either against CONTRACTOR and/or TVTC, for compensation and/or other benefits claimed as "common law" or "implied by law" employees of TVTC.

14. **Insurance.** CONTRACTOR shall procure, prior to commencement of service, and keep in force for the term of this Agreement, the following policies of insurance, certificates, or binders as necessary to establish that the coverage described below is in place with companies licensed to do business in California. If requested, CONTRACTOR shall provide TVTC with copies of all insurance policies. The insurance coverage shall include:

- A. **Commercial General Liability Insurance.** Commercial General Liability insurance, including but not limited to, bodily injury, broad form property damage, contractual liability and, if necessary, products and completed operations or owners and CONTRACTOR protective liability. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.

Coverage afforded TVTC shall be primary insurance. Any other insurance available to TVTC under any other policies shall be excess insurance. Limits of liability shall include the following:

- (1) Bodily injury, one million dollars (\$1,000,000)
- (2) Property damage, one million dollars (\$1,000,000) or
- (3) Combined single limit (CSL) for bodily injury and property damage, one million dollars (\$1,000,000) per accident for bodily injury and property damage.

If the policy is a "claims made" policy, the following endorsements shall be included:

- (1) The retroactive shall be the effective date of this Agreement or a prior date.
- (2) The extended reporting or discovery period shall be not less than thirty-six (36) months.

- B. Automobile Liability Insurance. Automobile liability insurance, including all owned, non-owned and hired automobiles used by the CONTRACTOR or its agents in the performance of this Agreement shall have a minimum combined single limit of one million dollars (\$1,000,000) for bodily injury and property damage.
- C. Worker's Compensation Insurance. Worker's Compensation insurance as required by the laws of the State of California including statutory coverage for Employers Liability with limits not less than one million dollars (\$1,000,000).

CONTRACTOR is aware of provisions in the California Labor Code, which require every employer to provide Worker's Compensation coverage, or to self-insure in accordance with provisions of that Code. CONTRACTOR shall comply with those provisions before commencing work hereunder and throughout the term of this Agreement. Likewise, CONTRACTOR shall require all of its subcontractors to comply with those provisions.

- D. Professional Liability Insurance. Professional liability (errors and omissions) insurance is required in the amount of one million dollars (\$1,000,000) per claim and in the aggregate for two (2) years beyond completion of this Agreement.

15. Additional Insurance Provisions. The following additional provisions apply to the insurance coverage required as indicated in paragraph 15 above.

- A. Additional Insured. CONTRACTOR shall name TVTC, its Councilmembers, officers, agents, and employees as additional insured in the aforementioned Comprehensive Commercial General Liability and Automobile Liability policies. If CONTRACTOR submits the ACORD Insurance Certificate, the additional insured endorsements must be set forth on CH20 10 11 85 (or more recent) form and/or CA 20 48 form.

- B. Notice of Cancellation. The policies shall provide for thirty (30) days written notice to TVTC prior to cancellation, termination or material change in coverage.
- C. Certificate Holder. The certificate holder shall be the same person and have the address as indicated in Paragraph 19 (Notices) of this Agreement.
- D. Insurance Rating. Insurers shall have current A.M. Best's rating of not less than A:VII, shall be licensed to do business in the State of California, and shall be acceptable to TVTC.
- E. Replacement Coverage. In the event CONTRACTOR breaches any of the insurance provisions of this Agreement, TVTC shall have the option to obtain, at CONTRACTOR'S expense, the coverage required hereunder. The cost of obtaining and maintaining such coverage may be deducted from any sums otherwise payable to CONTRACTOR for services under this Agreement.
- F. Interpretation. All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Officer of the State of California as of the effective date of this Agreement.
- G. Proof of Insurance. CONTRACTOR will be required to provide proof of insurance coverage required hereunder prior to executing the Agreement. Additionally, if requested by TVTC, CONTRACTOR shall provide certified copies of the insurance policies. Any endorsements must be signed by a person authorized by the insurer to bind coverage on its behalf.
- H. If the CONTRACTOR'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.

16. Termination on Notice. TVTC may terminate this Agreement immediately for cause or without cause upon giving thirty (30) calendar days' written notice to CONTRACTOR. In the event of termination without cause TVTC shall pay all charges outstanding and approved by TVTC at the time of termination within thirty (30) days following termination.

17. Suspension of Performance. For the convenience of TVTC or because of events beyond the control of TVTC, TVTC may give written notice to CONTRACTOR to suspend all work under this Agreement. If CONTRACTOR'S work is suspended for

longer than a period of one hundred twenty (120) days, an adjustment to CONTRACTOR'S compensation may be made for increased costs, if any and this Agreement shall be modified accordingly.

18. Notices. If either party shall desire or is required to give notice to the other such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

To TVTC:

c/o City of Dublin

Attn: Sai Midididdi

TVTC Administrative Staff

100 Civic Plaza

Dublin, CA 94568

To CONTRACTOR:

John Cropper

Cropper Rowe, LLP

2700 Ygnacio Valley Road, #270

Walnut Creek, CA 94598

Changes to the above information shall be given to the other party in writing ten (10) business days before the change is effective.

19. Commencement, Completion and Closeout. Time is of the essence in the performance of this Agreement. Any time extension granted to CONTRACTOR must be in writing and shall not constitute a waiver of right the TVTC may have under the Agreement.
20. It shall be the responsibility of CONTRACTOR to coordinate and schedule the work to be performed so that commencement and completions take place in accordance with the provisions of the Agreement. Within thirty (30) days of completion CONTRACTOR shall submit to TVTC a final billing to include all costs, charges, and claims in connection with the completed work. TVTC shall not be required to pay for any work or claims not included on the aforementioned final billing.
21. Arbitration. The parties will make a good faith effort to settle any controversy, claim or dispute arising out of or relating to this Agreement within thirty (30) days. If the issue is not resolved within that time, it shall be resolved by the American Arbitration Association. Judgment upon arbitration hereunder may be joined or consolidated with any other arbitration matter between the parties as the interest of justice and judicial economy may dictate. The prevailing party in any arbitration hereunder shall be entitled to recover all arbitration and legal expenses incurred, except attorney fees.
22. Governing Law/Venue. This Agreement shall be governed by the laws of the State of California with venue in either Alameda or Contra Costa County.
23. Entire Agreement of Parties. This Agreement supersedes any and all agreements, oral or written, between the parties with respect to the rendering of services by CONTRACTOR to CITY and contains all of the representations, covenants and agreements between the parties as to the rendering of those services.

*****SIGNATURES ON NEXT PAGE*****

TRI-VALLEY TRANSPORTATION COUNCIL

IN WITNESS WHEREOF the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed the effective date of this Agreement.

TRI-VALLEY TRANSPORTATION COUNCIL

DATED: 3/4/2024

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By: Jean Josey, TVTC Chair

**Cropper Rowe, LLP
CONTRACTOR**

DATED: 2/28/2024

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By: John A. Cropper, CPA, CGFM

APPROVED AS TO FORM

DATED: 2/28/2024

DocuSigned by:



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By: TVTC Legal Counsel

EXHIBIT A

Fiscal Year Audit	Required Audit Completion Date	Fee
FY 2023/24	12/31/24	\$5,000
FY 2024/25	12/31/25	\$5,250
FY 2025/26*	12/31/26	\$5,500
FY 2026/27*	12/31/27	\$5,750
Total for Initial Term:		\$10,250

Note: *Optional two-year extension.