



**REGIONAL TRANSPORTATION COMMISSION**

*Metropolitan Planning • Public Transportation & Operations • Engineering & Construction*

Metropolitan Planning Organization of Washoe County, Nevada

**Meeting Date:** 11/17/2022

From: Christian Schonlau, Director of Finance/CFO

**RECOMMENDED ACTION**

Approve contract with Trifox, LLC for Certified Payroll, Prevailing Wage, Apprenticeship Utilization Act, and Davis Bacon Compliance January 1, 2023 through December 31, 2026.

**BACKGROUND AND DISCUSSION**

See Attachment A for background and discussion.

**FISCAL IMPACT**

Not to exceed amount of \$64,080 funded in FY 2023 budget. 3% annual increase to not to exceed amount will be budgeted in future years.

**PREVIOUS BOARD ACTION**

There has been no previous board action taken.

**AGREEMENT FOR GOODS AND SERVICES**

FOR CERTIFIED PAYROLL AND DAVIS BACON COMPLIANCE

This agreement (“Agreement”) is dated and effective as of January 1, 2023, by and between the Regional Transportation Commission of Washoe County, Nevada (“RTC”) and Trifox, LLC (“Contractor”).

1. **Term.** The term of this agreement shall commence on the effective date above and shall end on December 31, 2026.
2. **Scope of Work.** Contractor shall provide the goods and services described in the scope of work attached as Exhibit A.
3. **Time for Performance.** The work shall be completed pursuant to the schedule of deliverables attached as Exhibit A.
4. **Compensation.** RTC shall pay Contractor for the goods and services pursuant to, and in an amount not to exceed \$268,087, pursuant to the pricing and fee schedule attached as Exhibit B. Contractor will invoice for services upon completion.
5. **Proceeding with Work.** Contractor shall not proceed with work until both parties have executed this Agreement and RTC has issued a purchase order. If Contractor proceeds with work before those conditions have been satisfied, Contractor shall forfeit any and all right to reimbursement and payment for work performed during that period. In the event Contractor violates this section, Contractor waives any and all claims and damages against RTC, its employees, agents, and affiliates, including but not limited to monetary damages, and any other remedy available at law or in equity arising under the terms of this Agreement.
6. **Invoices/Payment.** Contractor shall submit invoices to [accountspayable@rtcwashoe.com](mailto:accountspayable@rtcwashoe.com). RTC’s payment terms are 30 days after the receipt of the invoice. Simple interest will be paid at the rate of half a percent (0.5%) per month on all invoices approved by RTC that are not paid within thirty (30) days of receipt of the invoice.
7. **Legal/Regulatory Compliance.**
  - a. Contractor shall comply with all applicable federal, state and local government laws, regulations and ordinances. Contractor shall be responsible for obtaining all necessary permits and licenses for performance of services under this Agreement. Upon request of RTC, Contractor shall furnish RTC certificates of compliance with all such laws, orders and regulations.
  - b. Contractor represents and warrants that none of the services to be rendered pursuant to this Agreement constitute the performance of public work, as that term is defined by Section 338.010(17) of the Nevada Revised Statutes. To the extent Contractor does engage in such public work, Contractor shall be responsible for paying the prevailing wage as required by Chapter 338 of the Nevada Revised Statutes.

**8. Insurance.** Contractor shall obtain all types and amounts of insurance set forth in Exhibit C, and shall comply with all of its terms. Contractor shall not commence any work or permit any employee/agent to commence any work until satisfactory proof has been submitted to RTC that all insurance requirements have been met.

**9. Indemnification.** Contractor's obligations are set forth in Exhibit C. Said obligation would also extend to any liability of RTC resulting from any action to clear any lien and/or to recover for damage to RTC property.

**10. Termination.**

- a. Mutual Assent. This Agreement may be terminated by mutual written agreement of the parties.
- b. Convenience. RTC may terminate this Agreement in whole or in part for convenience upon written notice to Contractor.
- c. Default. Either party may terminate this Agreement for default by providing written notice of termination, provided that the non-defaulting party must first provide written notice of default and give the defaulting party and opportunity to cure the default within a reasonable period of time.

**11. Rights, Remedies and Disputes**

- a. RTC shall have the following rights in the event that RTC deems the Contractor guilty of a breach of any term under the Agreement:
  - i. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
  - ii. The right to cancel this Agreement as to any or all of the work yet to be performed;
  - iii. The right to specific performance, an injunction or any other appropriate equitable remedy; and
  - iv. The right to money damages.
- b. Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Agreement, which may be committed by RTC, the Contractor expressly agrees that no default, act or omission of RTC shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Agreement (unless RTC directs Contractor to do so) or to suspend or abandon performance.
- c. Disputes arising in the performance of this Agreement that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of RTC's Executive Director. This decision shall be final and conclusive unless within 10 days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to RTC's Executive Director. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of RTC's Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.
- d. Unless otherwise directed by RTC, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

**12. Ownership of Work.** Plans, reports, studies, tracings, maps, software, electronic files, licenses, programs, equipment manuals, and databases and other documents or instruments of service prepared or obtained by Contractor in the course of performing work under this Agreement, shall be delivered to and become the property of RTC. Software already developed and purchased by Contractor prior to the execution of the Project that will be used in the Project and services rendered under this Agreement, is excluded from this requirement. Contractor and its sub-contractors shall convey and transfer all copyrightable interests, trademarks, licenses, and other intellectual property rights in such materials to RTC upon completion of all services under this Agreement and upon payment in full of all compensation due to Contractor in accordance with the terms of this Agreement. Basic survey notes, sketches, charts, computations and similar data prepared or obtained by Contractor under this Agreement shall, upon request, also be provided to RTC.

**13. Records.** Contractor will permit RTC access to any books, documents, papers and records of Contractor pertaining to this Agreement, and shall maintain such records for a period of not less than three years.

**14. Exhibits.** The exhibits to this Agreement, and any additional terms and conditions specified therein, are a material part hereof and are incorporated by reference as though fully set forth herein.

**15. Exclusive Agreement.** This Agreement constitutes the entire agreement of the parties and supersedes any prior verbal or written statements or agreements between the parties.

**16. Amendment.** No alteration, amendment or modification of this Agreement shall be effective unless it is in writing and signed by both parties.

**17. No Assignment.** Contractor shall not assign, sublease, or transfer this Agreement or any interest therein, directly or indirectly by operation of law, without the prior written consent of RTC. Any attempt to do so without the prior written consent of RTC shall be null and void, and any assignee, sublessee, or transferee shall acquire no right or interest by reason thereof.

**18. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Nevada.

**19. Venue.** Any lawsuit brought to enforce this Agreement shall be brought in the Second Judicial District Court of the State of Nevada, County of Washoe appropriate court in the State of Nevada.

**20. Attorneys' Fees.** In the event of a dispute between the parties result in a proceeding in any Court of Nevada having jurisdiction, the prevailing party shall be entitled to an award of costs and any reasonable attorneys' fees.

**21. Certification Required by Nevada Senate Bill 27 (2017).** Contractor expressly certifies and agrees, as a material part of this Agreement, that it is not currently engaged in a boycott of Israel. Contractor further agrees, as a material part of this Agreement, it will not engage in a boycott of Israel for the duration of this Agreement. If, at any time during the formation or duration

of this Agreement, Contractor is engaged or engages in a boycott of Israel, it will constitute a material breach of this Agreement.

REGIONAL TRANSPORTATION  
COMMISSION OF WASHOE COUNTY

BY: \_\_\_\_\_  
Bill Thomas, AICP, Executive Director

TRIFOX, LLC

BY: \_\_\_\_\_  
Pam Fox, CB, Managing Member

## **Exhibit A**

### **Scope of Services**

#### **Prevailing Wage**

- Run Late Reports on the 16<sup>th</sup> of each month (or next business day if the 15<sup>th</sup> falls on a weekend or holiday)

Note: Prevailing wage is due on the 15<sup>th</sup> of each month for the prior month.

- Contact all prime contractors regarding any late CPR report and track these until there is compliance or if needed, summarize the issue and send to RTC to determine if this should be submitted to the Labor Commissioner for late fees and penalties.

#### **Davis Bacon**

- Run Late Reports weekly

Note: Davis Bacon CPRs are due 7 days after the pay date and are checked weekly.

- Contact all prime contractors regarding any late CPR report and track these until there is compliance or if needed, summarize the issue and send to RTC to determine if this should be submitted to the Labor Commissioner for late fees and penalties.

#### **Tasks Related to both Davis Bacon & Prevailing Wage Projects**

- Setup new projects in LCP Tracker.
- Respond to all emails within five days of original email.
- Approve Apprentices in LCP Tracker, including review of Apprentice Listing from the Labor Commissioner's website and the secondary document(s) provided by the contractor to ensure it matches the apprentice information listed in LCP Tracker. These are completed on an as-needed basis.
- Review uploaded fringe benefit agreements to ensure they are uploaded, and that they are properly completed for each sub and prime.
- Complete changes to LCP Tracker database, as needed.
- Keep a detailed file for each project. All documentation will be saved electronically. At the close of the project, the folder will be uploaded into the RTC cloud-based storage areas. The documents will be kept electronically as .pdfs and will consist of all pertinent project paperwork, including project setup and closure, notes, CPR late reports and logs, and SB 207 waivers (when provided). The email retention consists of electronic storage in a .pdf format by project. Note: The electronic storage will begin on January 1, 2022. Projects opened prior to that time will be a project file, which is the system up to December 31, 2021. Paper files will be

sent to the RTC retention storage area with a retention of seven (7) years.

- Prepare various reports as requested by RTC (such as a class wage and hour report, etc.). This includes reports at the close of each project related to SB 207.
- Complete CPR reports for unions or other entities as requested and approved by RTC.
- Complete job walk comparison to LCP Tracker reports, when required.
- Assist with audits of any type as requested by RTC.
- Update wage databases in LCP Tracker. Both Davis Bacon and Prevailing Wage sites are checked monthly for changes and updated when needed.
- Review the back-end security setup of LCP Tracker on an annual basis or whenever significant updates to LCP Tracker are completed. Changes are approved by RTC before implementing.

**Exhibit B**

Description	Year	Hours	Billing Rate	Total
Direct Labor	2023	801	80.00	\$ 64,080.00
Direct Labor	*2024	801	82.40	\$ 66,002.40
Direct Labor	*2025	801	84.87	\$ 67,980.87
Direct Labor	*2026	801	87.42	\$ 70,023.42
<b>Total Not-to-Exceed amount</b>				<b>\$ 268,086.69</b>
Not-to-Exceed billing rate is a fully loaded rate inclusive of all indirect expenses (overhead) and fee.				
*Billing rate annual increase is based on a projected average of 3% Cost of Living Index. To be adjusted when it is established each year.				



**Exhibit C**

**INDEMNIFICATION AND INSURANCE REQUIREMENTS FOR  
PROFESSIONAL SERVICE AGREEMENTS**

2022-07-08 Version

**1. INTRODUCTION**

IT IS HIGHLY RECOMMENDED THAT CONSULTANTS CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE THE AVAILABILITY OF THESE INSURANCE CERTIFICATES AND ENDORSEMENTS IN ADVANCE OF PROPOSAL SUBMISSION. IF THERE ARE ANY QUESTIONS REGARDING THESE INSURANCE REQUIREMENTS, IT IS RECOMMENDED THAT THE AGENT/BROKER CONTACT RTC'S FINANCE DIRECTOR AT (775) 335-1845.

**2. INDEMNIFICATION**

CONSULTANT agrees to defend, save and hold harmless and fully indemnify RTC, Washoe County, City of Reno, and City of Sparks, including their elected officials, officers, employees, and agents (hereafter, "Indemnitees") from and against any and all claims, proceedings, actions, liability and damages, including attorneys' fees and defense costs incurred in any action or proceeding (collectively "Damages") arising out of:

- A. Any breach of duty, neglect, error, misstatement, misleading statement or omission committed in the conduct of CONSULTANT'S profession, work or services rendered by (i) CONSULTANT, its employees, agents, officers, or directors, (ii) subconsultants (hereafter, "Subs"), or (iii) anyone else for which CONSULTANT may be legally responsible; and
- B. The negligent acts of CONSULTANT, its employees, agents, officers, directors, Subs, or anyone else for which CONSULTANT is legally responsible; and
- C. The infringement of any patent or copyright resulting from the use by the Indemnitees of any equipment, part, component or other deliverable (including software) supplied by CONSULTANT under or as a result of this Agreement, but excluding any infringement resulting from the modification or alteration by the Indemnitees of any equipment, part, component, or other deliverable (including software) except as consented to by CONSULTANT.

The Damages shall include, but are not limited to, those resulting from personal injury to any person, including bodily injury, sickness, disease or death and injury to real property or personal property, tangible or intangible, and the loss of use of any of that property, whether or not it is physically injured.

If the Indemnitees are involved in defending actions, CONSULTANT shall reimburse the Indemnitees for the time spent by such personnel at the rate the Indemnitees pay for such services.

If an Indemnitee is found to be liable in the proceeding, then CONSULTANT'S obligation hereunder shall be limited to the proportional share of the liability attributed to CONSULTANT.

In determining whether a claim is subject to indemnification, the incident underlying the claim shall determine the nature of the claim.

In the event of a violation or an infringement under paragraph 2.C above and the use is enjoined, CONSULTANT, at its sole expense, shall either (1) secure for the Indemnitees the right to continue using the materials by suspension of any injunction or by procuring a license or licenses for the Indemnitees; or (2) modify the materials so that they become non-infringing. This covenant shall survive the termination of this Agreement.

### **3. GENERAL REQUIREMENTS**

Prior to the start of any work on a RTC project, CONSULTANT shall purchase and maintain insurance of the types and limits as described herein insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its Subs, or their employees, agents, or representatives. The cost of all such insurance shall be borne by CONSULTANT.

### **4. VERIFICATION OF COVERAGE**

CONSULTANT shall furnish RTC with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein, on forms acceptable to RTC. All deductibles and self-insured retentions requiring RTC approval shall be shown on the certificate. All certificates and endorsements are to be addressed to RTC's Finance Director and be received by RTC before work commences. Upon request, the CONSULTANT agrees that RTC has the right to review CONSULTANT'S and the Sub's insurance policies, or certified copies of the policies. Copies of applicable policy forms or endorsements confirming required additional insured, waiver of subrogation and notice of cancellation provisions are required to be provided with any certificate(s) evidencing the required coverage.

### **5. NOTICE OF CANCELLATION**

CONSULTANT or its insurers shall provide at least thirty (30) days' prior written notice to RTC prior to the cancellation or non-renewal of any insurance required under this Agreement. An exception may be included to provide at least ten (10) days' written notice if cancellation is due to non-payment of premium. CONSULTANT shall be responsible to provide prior written notice to RTC as soon as practicable upon receipt of any notice of cancellation, non-renewal, reduction in required limits or other material change in the insurance required under this Agreement.

### **6. SUBCONSULTANTS & SUBCONTRACTORS**

CONSULTANT shall include all Subcontractors and Subconsultants (referred to collectively as "Subs") as insureds under its liability policies OR shall cause Subs employed by CONSULTANT to purchase and maintain separate liability coverages and limits of the types specified herein. If any Subs maintain separate liability coverages and limits, each shall include the RTC, Washoe

County, City of Reno and City of Sparks as additional insureds under its commercial general liability policy, subject to the same requirements stated herein, without requiring a written contract or agreement between each of the additional insureds and any sub-consultant or sub-contractor. Any separate coverage limits of liability maintained by Subs shall be at least **\$1,000,000** per occurrence and at least **\$2,000,000** for any applicable coverage aggregates or the amount customarily carried by the Sub, whichever is GREATER. If any Subs provide their own insurance with limits less than required of the Contractor, Contractor shall include Subs in their coverage up to the full limits required of the Contractor. When requested by RTC, CONSULTANT shall furnish copies of certificates of insurance evidencing coverage for each Sub. The CONSULTANT need not require its non-design subcontractors to carry Professional Errors and Omissions Liability insurance.

## **7. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions that exceed \$25,000 per occurrence or claim must be declared to RTC's Finance Director prior to signing this Agreement. RTC is entitled to request and receive additional documentation, financial or otherwise, prior to giving its approval of the deductibles and self-insured retentions. Any changes to the deductibles or self-insured retentions made during the term of this Agreement or during the term of any policy must be declared to the RTC's Finance Director prior to the change taking effect.

## **8. ACCEPTABILITY OF INSURERS**

Required insurance is to be placed with insurers with a Best's rating of no less than A-VII and acceptable to RTC. RTC may accept coverage with carriers having lower Best's ratings upon review of financial information concerning CONSULTANT and the insurance carrier. RTC reserves the right to require that CONSULTANT'S insurer(s) be licensed and admitted in the State of Nevada or meet any applicable state and federal laws and regulations for non-admitted insurance placements.

## **9. OTHER CONDITIONS**

- A. Failure to furnish the required certificate(s) or failure to maintain the required insurance may result in termination of this Agreement at RTC's option.
- B. If CONSULTANT fails to furnish the required certificate or fails to maintain the required insurance as set forth herein, RTC shall have the right, but not the obligation, to purchase said insurance at CONSULTANT's expense.
- C. Any waiver of CONSULTANT's obligation to furnish such certificate or maintain such insurance must be in writing and signed by an authorized representative of RTC. Failure of RTC to demand such certificate or other evidence of full compliance with these insurance requirements or failure of RTC to identify a deficiency from evidence that is provided shall not be construed as a waiver of CONSULTANT's obligation to maintain

such insurance, or as a waiver as to the enforcement of any of these provisions at a later date.

- D. By requiring insurance herein, RTC does not represent that coverage and limits will necessarily be adequate to protect CONSULTANT, and such coverage and limits shall not be deemed as a limitation on CONSULTANT's liability under the indemnities granted to RTC in this contract.
- E. If CONSULTANT'S liability policies do not contain the standard ISO separation of insureds condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

## **10. COMMERCIAL GENERAL LIABILITY**

CONSULTANT shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than **\$2,000,000** each occurrence. If such CGL insurance contains a general aggregate limit, it shall be increased to equal twice the required occurrence limit or revised to apply separately to this project.

CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

RTC and any other Indemnitees listed in Section 2. INDEMNIFICATION of this Agreement shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 07/04 or CG 20 33 07/04 or a substitute providing equivalent coverage, and under the commercial umbrella, if any.

This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to RTC or any other Indemnitees under this Agreement.

CONSULTANT waives all rights against RTC and any other Indemnitees listed in Section 2. INDEMNIFICATION of this Agreement for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this agreement. CONSULTANT's insurer shall endorse CGL policy to waive subrogation against RTC with respect to any loss paid under the policy.

## **11. COMMERCIAL AUTOMOBILE LIABILITY**

CONSULTANT shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than **\$1,000,000** each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage for all owned, leased, hired (rented) and non-owned

vehicles (as applicable). RTC may agree to accept auto liability for non-owned and hired (rented) vehicles under the CGL if CONSULTANT does not own or operate any owned or leased vehicles.

CONSULTANT waives all rights against RTC, its officers, employees and volunteers for recovery of damages to the extent these damages are covered by the automobile liability or commercial umbrella liability insurance obtained by CONSULTANT pursuant to this Agreement.

## **12. INDUSTRIAL (WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY) INSURANCE**

It is understood and agreed that there shall be no Industrial (Worker's Compensation and Employer's Liability) Insurance coverage provided for CONSULTANT or any Subs by RTC. The CONSULTANT, and any Subs, shall procure, pay for and maintain the required coverages.

CONSULTANT shall maintain workers' compensation and employer's liability insurance meeting the statutory requirements of the State of Nevada, including but not limited to NRS 616B.627 and NRS 617.210. The employer's liability limits shall not be less than **\$1,000,000** each accident for bodily injury by accident or **\$1,000,000** each employee for bodily injury by disease.

CONSULTANT shall provide a Final Certificate for itself and each Sub evidencing that CONSULTANT and each Sub maintained workers' compensation and employer's liability insurance throughout the entire course of the project.

If CONSULTANT, or any Sub is a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance and Final Certificate.

CONSULTANT waives all rights against RTC, its elected officials, officers, employees and agents for recovery of damages to the extent these damages are covered by the workers compensation and employer's liability or commercial umbrella liability insurance obtained by Tenant pursuant to this agreement. CONSULTANT shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver.

## **13. PROFESSIONAL ERRORS AND OMISSIONS LIABILITY**

CONSULTANT shall maintain professional liability insurance applying to liability for a professional error, omission, or negligent act arising out of the scope of CONSULTANT'S services provided under this Agreement with a limit of not less than **\$1,000,000** each claim and annual aggregate. CONSULTANT shall maintain professional liability insurance during the term of this Agreement and, if coverage is provided on a "claims made" or "claims made and reported" basis, shall maintain coverage or purchase an extended reporting period for a period of at least three (3) years following the termination of this Agreement.

## **14. NETWORK SECURITY AND PRIVACY LIABILITY**

If CONSULTANT will have access to RTC computer or network systems for any reason and/or data including personal information (as defined in NRS 603A.040) or confidential information, CONSULTANT shall maintain network security and privacy liability insurance insuring against

loss resulting from (1) privacy breaches [liability arising from the loss or disclosure of confidential information] (2) system breach (3) denial or loss of service (4) introduction, implantation, or spread of malicious software code (5) unauthorized access to or use of computer systems and (6) system failure. Coverage shall be provided with a limit of not less than **\$1,000,000** per claim and annual aggregate.

## **15. CRIME INSURANCE**

If CONSULTANT will have care, custody or control of RTC money, securities or other property, CONSULTANT shall maintain crime insurance including coverage for the loss of money, securities and other property by employees or other parties with a limit not less than **\$1,000,000** per occurrence. Coverage shall be endorsed to include coverage for loss of RTC money, securities and other property in the care, custody or control of CONSULTANT.