

Attachment

I

AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this xx day of xxx, xx, by and between the City of Visalia (hereinafter referred to as "Visalia" or "CLIENT") and the California Vanpool Authority (CalVans) (hereinafter referred to as "CONTRACTOR").

WITNESSETH

WHEREAS, VISALIA is the recipient of additional Federal 5307 funds through the reporting efforts of CalVans for vanpool trips that travel to or from the Visalia/Tulare UZA, it is the desire of both parties to encourage local participation in the CalVans program so as to increased 5307 funding to VISALIA; and

WHEREAS, VISALIA is committed to encouraging increased vanpool use in Tulare County through the financial support of vanpool groups traveling to or from Tulare County; and

WHEREAS, CONTRACTOR is qualified and experienced and has necessary technical and personnel resources to provide such services for the provision of vanpool services; and

NOW, THEREFORE, VISALIA and CONTRACTOR for the considerations hereinafter set forth, mutually agree as follows:

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. SCOPE OF WORK

A. CONTRACTOR shall perform those services described in the "Project Tasks/Services, Timeline and Budget," Exhibit A attached hereto and incorporated herein by this reference and shall comply with all relevant conditions as set forth in the AGREEMENT.

B. Time is of the essence in this Agreement.

C. Said services and all duties incidental or necessary thereto shall be performed diligently and competently and in accordance with professional standards of performance.

2. TERM

A. The term of this Agreement shall be from the date of its execution until the completion of the work contemplated by this Agreement and its final acceptance by VISALIA unless terminated earlier as provided herein. CONTRACTOR shall complete all tasks **on or before June 30, 2016** unless otherwise extended by written authorization.

- B. Services performed under this Agreement shall commence only upon written Notice to Proceed by VISALIA to CONTRACTOR.

This Agreement includes the following Exhibits:

Exhibit A. Project Tasks/Services, Timeline, and Budget

Exhibit B. Debarment and Suspension Certification

Exhibit C. Federal Tax Form W-9, Request for Taxpayer Identification Number and Certification

3. COORDINATION/STAFFING

- A. CONTRACTOR shall assign CalVans Director as **Project Manager** to personally participate in said project. VISALIA also retains the right to approve any substitution of the Project Manager. No portion of the work included in this Agreement shall be subcontracted, except as provided herein, without the prior, written authorization of the VISALIA.
- B. Services described in the Scope of Work shall be performed by CONTRACTOR's staff, Subcontractor(s) or other members of the project team, hereinafter referred to as "Subcontractor(s)," listed in the "Project Tasks/Services, Timeline, and Budget," Exhibit A, attached hereto and incorporated by this reference.

4. COMPENSATION

VISALIA shall pay CONTRACTOR a firm fixed fee as shown in Exhibit A of THREE HUNDRED AND NO/100 DOLLARS (\$300.00) per vanpool per month for each reported vanpool operation. In no event shall total compensation exceed \$350,000 (THREE HUNDRED FIFTY THOUSAND AND NO HUNDRED AND NO/100 DOLLARS) for the entire life of the vanpool subsidy without prior written consent of VISALIA.

5. INVOICING

- A. Invoices for services must be presented to VISALIA quarterly no later than the fifteenth day of the month for the month prior. CONTRACTOR shall submit an invoice to VISALIA stating the amount due for such services on a monthly basis throughout the duration of the project. Said monthly invoicing shall reflect the task worked on, the percentage of the task completed, and the total dollar amount for the task in comparison to the invoiced amount based upon

the percentage of the task then completed. VISALIA shall reimburse the CONTRACTOR as promptly as its fiscal procedures permit, upon receipt of itemized invoices submitted in accordance with this Agreement. Payment of the invoices will be made to CONTRACTOR after acceptance and approval by VISALIA. Such reimbursements shall be based upon actual eligible costs incurred by the CONTRACTOR consistent with the "Project Tasks/Services, Timeline, and Budget," Exhibit A. No interest or carrying charges shall accrue to CONTRACTOR by reason of delayed payment.

B. Invoicing Format and Content: All invoices submitted to VISALIA for payment shall be sent directly to:

City of Visalia

ATTN: Transit Manager

425 E. Oak Ave., Suite 301

Visalia, CA 93291

1. The invoice shall be entitled "Invoice" or otherwise clearly identify that the document is an Invoice, and shall contain the following information:
 - i. VISALIA's "Bill To" information as stated in the above paragraph;
 - ii. Invoice number and/or billing number specified by CONTRACTOR. The invoice number must be unique for each invoice submitted;
 - iii. Invoice date;
 - iv. Billing period specified with beginning and ending dates. The beginning date must not be sooner than the Notice to Proceed date of the Agreement, or within any previous billing dates;
 - v. Total amount due for the billing period;
 - vi. Total Contract Value; and
 - vii. VISALIA Project Manager

6. AGREEMENT COMPLETION RETAINER

No retainage will be held by VISALIA from progress payments due to CONTRACTOR.

7. SATISFACTORY PERFORMANCE

Payment for services under this Agreement is contingent upon VISALIA's determination that the performance of the CONTRACTOR has been satisfactory.

8. OWNERSHIP OF WORK PRODUCT

A. Ownership of any reports, data, studies, surveys, charts, memoranda, and any other documents which are developed, compiled, or produced as a result of this Agreement, whether or not completed, shall vest with VISALIA.

B. Methodology, materials, software logic and systems developed under this Agreement are the property of VISALIA, and may be used by VISALIA as it sees fit, including the right to revise or publish the same without limitation.

9. ADDITIONAL SERVICES

CONTRACTOR may be requested to perform additional services beyond the original Scope of Services. Such work may be undertaken only upon prior written authorization of VISALIA based upon an agreed amount of compensation.

10. NOTICES

Any notice to be given to the parties hereunder shall be addressed as follows (until notice of a different address is given to the parties):

VISALIA: City of Visalia Transit Division
425 E. Oak Ave., Suite 301
Visalia Ca 93291

CONTRACTOR: Ronald Hughes, Executive Director
1340 North Drive
Hanford, CA 93230

Any and all notices or other communications required or permitted relative to this Agreement shall be in writing and shall be deemed duly served and given when personally delivered to either of the parties, CONTRACTOR

or VISALIA, to whom it is directed; or in lieu of such personal service, when deposited in the United States mail, first class, postage prepaid, addressed to CONTRACTOR or to VISALIA at the addresses set forth above.

Either party may change their address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided for in the preceding paragraph.

11. AGREEMENT CONTAINS ALL UNDERSTANDINGS:
AMENDMENT

A. This document represents the entire and integrated Agreement between VISALIA and CONTRACTOR, and supersedes all prior negotiations, representations and agreements, either written or oral.

B. Any modification or amendment to this Agreement must be in writing.

C. Neither VISALIA nor CONTRACTOR shall be deemed to have waived any obligation of the other, or to have agreed to any modification to this Agreement unless it is in writing, and signed by the party giving the waiver.

12. SEVERABILITY

A. If any term of this Agreement is held invalid by a court of competent jurisdiction or arbitrator the remainder of this Agreement shall remain in effect.

13. TERMINATION

A. Termination of Convenience of VISALIA

VISALIA may terminate this Agreement at any time by giving notice to the CONTRACTOR of such termination (including the effective termination date) at least sixty (60) calendar days before the effective date of such termination. In such event, all finished or unfinished documents and other materials as described in this Agreement, at the option of VISALIA, become VISALIA's property. If this Agreement is terminated by VISALIA, as provided herein, VISALIA's only obligation shall be the payment of fees and expenses incurred prior to the termination date, for work deemed satisfactory to VISALIA, in accordance with the cost provisions of this Agreement.

B. Termination for Cause

If through any cause, the CONTRACTOR shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the CONTRACTOR violates any of the covenants, terms, or stipulations of this Agreement, VISALIA shall thereupon have the right to terminate the Agreement by giving not less than ten (10) working days written notice to the CONTRACTOR of the intent to terminate and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the CONTRACTOR under this Agreement shall, at the option of CONTRACTOR, become VISALIA's property.

14. RECORDS RETENTION AND AUDITS

CONTRACTOR shall maintain adequate records of contract performance costs, expenses, etc., and make these records available for inspection, audit, and copying by VISALIA and CONTRACTOR's principal place of business during the agreement period and for a period of three (3) years from the date of final payment, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until VISALIA, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

STOP

15. SUBCONTRACTING

In accordance with Government Code Section 7550, CONTRACTOR agrees to state in a separate section of any filed report the numbers and dollars amounts of all contracts and subcontracts relating to preparation of the report.

16. ASSIGNMENT

The Agreement shall not be assigned by the CONTRACTOR, in whole or in part, without the prior written consent of VISALIA. Any purported assignment or delegation of performance in violation of this provision is void. Subject to the foregoing this Agreement is binding and shall inure to the benefit of the successors and assigns of the parties to this Agreement.

17. INDEMNIFICATION

In no event shall VISALIA, their officers, employees and agents be liable for incidental, indirect, special or consequential damages, lost profits, savings, revenues, lost data, downtime, accidents, death, injury, dismemberment, and other losses whether or not VISALIA, their officers, employees and agents have been advised of the possibility of such damages

To the full extent permitted by law, CONTRACTOR shall indemnify, hold harmless, release and defend VISALIA, their officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity including CONTRACTOR and vanpool users, in whole or in part, arising out of Contractor's activities hereunder, including the activities of other persons employed or utilized by CONTRACTOR in the performance of this Agreement (including design defects and regardless of VISALIA's approval, use or acceptance of the work or work product hereunder) excepting liabilities due to the admitted or adjudicated sole negligence or willful misconduct of VISALIA. If the adjudicated or admitted sole negligence or willful misconduct of VISALIA has contributed to a loss, CONTRACTOR shall not be obligated to indemnify VISALIA for the proportionate share of such loss caused by such sole negligence or willful misconduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for CONTRACTOR under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by CONTRACTOR and shall continue to bind the parties after termination/completion of this Agreement.

18. INSURANCE/NOTIFICATION

Prior to the beginning, and throughout the duration, of the work, CONTRACTOR will maintain insurance in conformance with the requirements set forth below. CONTRACTOR will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. CONTRACTOR acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to VISALIA.

CONTRACTOR is covered by, and agrees to maintain, general liability insurance for bodily injury and property damage arising directly from its negligent acts or omissions with limits as specified below. Certificates of insurance shall be provided to VISALIA prior to commencement of work

by CONTRACTOR. CONTRACTOR agrees to indemnify, protect, defend and name VISALIA, its public officials, officers and employees as additional insured on the Commercial General Liability and Business Auto Insurance and hold harmless from any loss, damage or liability arising directly from any negligent act or omission by CONTRACTOR. CONTRACTOR shall not be responsible for any loss, damage or liability arising from any act or omission by VISALIA, its officials, officers or employees.

CONTRACTOR shall provide the following types and amounts of insurance:

- A. Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregates.
- B. Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.
- C. Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including owned, non-owned and hired autos, or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONTRACTOR or CONTRACTOR'S employees use personal autos in any way on this project, CONTRACTOR shall obtain evidence of personal auto liability coverage for each such person.
- D. Errors and Omissions Liability CONTRACTOR shall provide evidence of professional liability insurance on a policy form appropriate to Contractor's profession. Limits shall be no less than \$1,000,000/claim.
- E. Certificate of Insurance CONTRACTOR shall file a certificate of insurance completed and filed with VISALIA within fifteen (15) days of execution of this Agreement and prior to engaging any operation or activities set forth in this Agreement. The foregoing policies shall provide that no cancellation, major change in coverage or expiration by insurance company or insured during the term of this contract shall occur without thirty (30) days written notice to VISALIA prior to the effective date of such cancellation or change in coverage.

F. All such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of two (2) years after completion of the contract.

G. The Commercial General Liability and Business Auto insurance policies shall provide an endorsement naming VISALIA, its officers, agents, employees and volunteers as Additional Insured, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by VISALIA and that the insurance of the Additional Insured shall not be called upon to contribute to a loss covered by the insurance VISALIA.

19. CONFLICT OF INTEREST

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

20. STATEMENT OF ECONOMIC INTEREST

If VISALIA determines CONTRACTOR comes within the definition of CONTRACTOR under the Political Reform Act (Government Code §87100), CONTRACTOR shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with VISALIA disclosing CONTRACTOR and/or such other person's financial interests.

21. MERGER

This Agreement shall constitute the entire Agreement between the parties and shall supersede any previous agreements, whether verbal or written, concerning the same subject matter. No modification of this Agreement shall be effective unless and until evidence by a writing is signed by both parties.

22. DEFAULT

If CONTRACTOR should fail to perform any of his obligations hereunder, within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, VISALIA may terminate this Agreement by

giving CONTRACTOR written notice of such termination, stating the reason for such termination. In such event, CONTRACTOR shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the agreement as the services satisfactorily rendered hereunder by CONTRACTOR bear to the total services otherwise required to be performed for such total fee; provided, however, that VISALIA may withhold payments not yet made to CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due VISALIA from CONTRACTOR is determined.

23. NO WAIVER OF BREACH/ TIME

The waiver by VISALIA of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement. Time is of the essence in carrying out the duties hereunder.

24. THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

25. ATTORNEYS' FEES, APPLICABLE LAW AND FORUM

In the event either party brings an action or proceeding for damages arising out of the other's performance under this Agreement or to establish the right or remedy of either party, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as part of such action or proceeding, whether or not such action or proceeding is prosecuted to judgment. This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Tulare.

26. INDEPENDENT CONTRACTOR

The parties intend that CONTRACTOR, in performing the services specified herein, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. CONTRACTOR is not to be considered an agent or employee of VISALIA and is not entitled to participate in any pension plan, insurance, bonus or similar benefits

VISALIA provides its employees. In the event VISALIA exercises its right to terminate this Agreement, CONTRACTOR expressly agrees that he/she shall have no recourse nor right of appeal under rules, regulations, ordinances or laws applicable to employees.

27. TAXES

CONTRACTOR agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold VISALIA harmless from any liability which it may incur to the United States or to the State of California as a consequence of CONTRACTOR'S failure to pay, when due, all such taxes and obligations.

28. FEDERAL TAX FORMS

Prior to issuing the initial claim under this Agreement, the CONTRACTOR shall submit Federal Tax Form W-9, Request for Taxpayer Identification Number and Certification to the following address:

City of Visalia

ATTN: Transit Manager

425 E. Oak Ave., Suite 301

Visalia, CA 93291

or by FAX to: (559) 713-4815. Unless VISALIA receives a completed Tax Form W-9, payments for services performed under this AGREEMENT shall be subject to federal backup withholding.

29. COMPLIANCE WITH LAWS, RULES, AND REGULATIONS

A. CONTRACTOR shall study and comply with all applicable federal, state and local laws, rules and regulations affecting the CONTRACTOR and his/her work hereunder. CONTRACTOR represents and warrants to VISALIA that CONTRACTOR has and will keep in effect during the term of this Agreement all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for CONTRACTOR to practice Contractor's profession and to do the work hereunder.

B. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to VISALIA for inspection.

30. INTERPRETATION

Notwithstanding the fact that one or more provisions of this Agreement may have been drafted by one of the parties to this Agreement, such provisions shall be interpreted as though they were a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

31. National Transit Database (NTD)

CONTRACTOR shall report all required NTD data in the annual NTD reporting system and provide Visalia a copy of each annual report submitted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

VISALIA:

Signature: _____

Name:

Title:

City of Visalia

CONTRACTOR:

Signature: _____

Name:

Title:

California Vanpool Authority

Exhibit A. included in this Agreement as a sample.
Complete Exhibit A. for each individual vanpool and attach to Agreement.

EXHIBIT A. PROJECT TASKS/SERVICES, TIMELINE, AND BUDGET

WHEREAS, VISALIA has entered into an Agreement dated _____, 20__, with the _____ (hereinafter referred to as "Contractor"), for the purpose of the following:

1. Contractor shall perform all activities and work necessary to start and administer a vanpool passenger incentive for Vanpool #s _____, including provision of vanpool services. VISALIA has assigned the above vanpool identification number upon receiving and approving a vanpool start application filed by Contractor. Vanpool #s _____ (hereinafter referred to as "Vanpool"), consists of a minimum of six (6) vanpool passengers travelling from or to Tulare County.
2. Contractor agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, per schedule, in a professional manner, the services described herein.
3. VISALIA will provide a monthly financial incentive for up to \$300.00 (THREE HUNDRED AND NO/100 DOLLARS) per month to support the operation of Vanpool. The total annual amount of the financial incentive is not to exceed \$3,600 (THREE THOUSAND AND SIX HUNDRED AND NO/100 DOLLARS) per vanpool.
4. Each Vanpool will transport employees/agricultural employees/college students between their place of residence and place of employment/college for their daily commute. The financial incentive provided by VISALIA will be used by Contractor to encourage commuters to form or join a Vanpool.
5. Contractor shall provide VISALIA with monthly and Annual Reports.
6. Contractor shall collect daily, and report in the Quarterly Reports, monthly information about the following measurements:
 - a. Number of riders and full names of riders in vanpool
 - b. Daily distance traveled by vanpool
 - c. Daily distance traveled by each rider
 - d. Monthly distance traveled by vanpool
 - e. Calculated vehicle miles traveled (VMT) reduced by vanpool each month.
7. Contractor will request subsidy reimbursements monthly and support each request by a Monthly Report. VISALIA will process the Contractor's incentive invoice payments quarterly.
8. VISALIA will retain the right to request mileage and vanpool operational information after the subsidy completion date.
9. Contractor will secure and report to VISALIA vanpool user fees from vanpool riders receiving a financial incentive.
10. Contractor shall affix decal on vanpool denoting "Funded in part by a grant from the City of Visalia." VISALIA shall supply decals to Contractor. Contractor will provide photo documentation of vanpool showing decal.

CONTRACT DELIVERABLES

1. Interim progress report on a monthly basis
2. Annual report at the end of the first project year, if project continues for more than twelve (12) months
3. Final report

VISALIA:

Signature: _____

Name: _____ **Title:** _____

City of Visalia (VISALIA)

CONTRACTOR:

Signature: _____

Name: _____ **Title:** _____

End of Exhibit A.

**EXHIBIT B. DEBARMENT AND SUSPENSION
CERTIFICATION**

**TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29
DEBARMENT AND SUSPENSION CERTIFICATION**

1. All persons or firms, including Subcontractor(s), must complete this certification and certify, under penalty of perjury, that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not, within the three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and
 - d. Have not, within the three (3) year period preceding this certification, had one or more public transactions (Federal, state, and local) terminated for cause or default.

2. If such persons or firms later become aware of any information contradicting the statements of paragraph (1), they will promptly provide that information to VISALIA.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted

above, indicate below to whom it applies, initiating agency, and dates of actions.

The certification in this clause is a material representation of fact relied upon by VISALIA. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to VISALIA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Name of Firm

Signature (original signature required)

Date

**EXHIBIT C. FEDERAL TAX FORM W-9, REQUEST
FOR TAXPAYER IDENTIFICATION NUMBER AND
CERTIFICATION**