



Eastern Sierra Transit Authority (ESTA)

Request for Proposal for: Financial Audit Services

Due Date: June 11, 2018 at 4:00 pm to the attention of:

Karie Bentley
Administration Manager
Eastern Sierra Transit Authority (ESTA)
kbentley@estransit.com
703 Airport Road
Bishop, CA 93514
760.872.1901

*Proposals that are received after the due date and time will not be considered.
Respondents should submit a complete proposal, clearly marked on the Subject line as:
"Financial Audit Services Proposal".*

I. **INTRODUCTION:**

A. **General Information**

The Eastern Sierra Transit Authority (“ESTA”) is requesting proposals (RFP) from qualified certified public accounting firms to perform professional auditing services for a three-year period beginning with the fiscal year ending June 30, 2018 for the Eastern Sierra Transit Authority with the option of extending the contract for three (3) additional one-year periods. The contract may be canceled if ESTA determines the audit services to be unsatisfactory.

These audits are to be performed in accordance with auditing standards generally accepted in the United States of America, the standards set forth for financial audits contained in Government Auditing Standards and the U.S. Office of Management and Budget (OMB) Circular A-133 Audits of State and Local Governments and Non-Profit Organizations and State of California Transportation Act and the California State Controller’s Office.

There is no expressed or implied obligation for ESTA to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250 et set.), unless exempt. Additionally, ESTA reserves the right to reject any or all proposals submitted.

ESTA reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between ESTA and the firm selected.

To be considered, please submit an **electronic copy (pdf format)** of your proposal by 4:00 p.m. on Monday June 11, 2018 to:

kbentley@estransit.com

The subject line of the email must read “Financial Audit Services Proposal”. A hard-copy of the proposal is not requested.

II.

A. **Background Information**

It is the intent of ESTA to contract for the services presented herein for a term of three (3) years. ESTA reserves the right to extend the term of this contract for two (2) additional three-year terms subject to the satisfactory negotiation of

terms, including a price acceptable to both ESTA and the selected firm (“Outside Auditor”). The proposal package shall present all inclusive audit fees for each year of the contract term.

Fees shall include costs for each year including the two additional three-year options. An itemized cost break down shall be submitted for the Principal and any additional staff. ESTA requires the total costs be stated as a “not to exceed” basis. The “not to exceed” fee shall be inclusive of labor, travel, report preparation, printing, and all other expenses incurred by the Outside Auditor.

Fees shall be billed monthly based on work completed. Payments will be made in arrears. ESTA shall reimburse the Outside Auditor as promptly as practical after receipt of acceptable invoices which detail the expenses and the period for which payment is requested.

The Inyo County Auditor-Controller (Auditor-Controller) provides accounting services for ESTA and the Inyo County Treasurer serves as ESTA’s Treasurer. The Auditor-Controller’s office facilitates ESTA audits by providing services such as gathering data, managing the contract, providing communications between ESTA and the Outside Auditor and generally overseeing the audit process.

B. Prior Auditors

Fechter & Company has performed the previous financial audits for ESTA. PMC has performed the Triennial Performance Audit.

III. NATURE OF SERVICES REQUIRED

A. Scope of Work

Prepare annual financial statement and compliance audits for fiscal years, 2017/2018, 2018/2019 and 2019/2020.

The audit will include the following:

- Preparation and submission of the Transit Operators Financial Transactions Report (State Controller’s Report) for ESTA.
- Report on compliance over financial reporting based on an audit of financial statements performed in accordance with the statutes, rules and regulations of the California Transportation Development Act. ESTA desires the firm to audit all funds of the agency in accordance with auditing standards generally accepted in the United States of America and Government Auditing Standards, issued by the Comptroller of the United States.

Additional Requirements:

The audit and all reports shall conform to all California Code of Regulations (CCR), Public Utilities Code (PUC), the Government Code and all State and/or Federal rules and regulations that are applicable to ESTA.

The selected Outside Auditor will be required to complete the following tasks in relationship to the Basic Financial Statements:

1. Express an opinion on the financial statements as to whether they present fairly, in all material respects, the financial position of ESTA and the changes in financial position in conformity with generally accepted accounting principles (GAAP), and issue an independent auditors' report stating this opinion.
2. Test internal control over financial reporting and compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters, in accordance with *Government Auditing Standards*.
3. Apply limited procedures related to the Required Supplementary Information (RSI), Management's Discussion and Analysis (MD&A), budgetary comparison information, and the Supplementary Information.
4. Prepare Report to Board of Directors and Management that identifies control deficiencies, significant deficiencies and material weaknesses, if any, and your recommendations for improvements in accounting and administrative controls.
5. If necessary, prepare a single audit in compliance with OMB A-133.
6. Communicate immediately and in writing all irregularities and illegal acts, or indications of illegal acts, of which they become aware, to the ESTA Executive Director and the County of Inyo Auditor-Controller.
7. Retain at Outside Auditor's expense audit working papers for three (3) years, unless the firm is notified in writing by the Auditor-Controller of the need to extend the retention period. In addition, the firm shall respond to reasonable inquiries of the Auditor-Controller and successor Outside Auditors and allow the Auditor-Controller and successor Outside Auditors to review working papers relating to matters of continuing accounting significance.
8. Provide general consultation as required, during the year, on financial reporting matters.

IV. TIMING AND OTHER REQUIREMENTS

1. Key Dates for Proposal Evaluation and Selection:

- | | |
|--------------------------|--|
| a. Monday, May 7, 2018 | RFP issued |
| b. Monday, June 11, 2018 | Proposals due |
| c. Friday, June 15, 2018 | Board of Directors approval of proposals |
| d. By July 13, 2018 | Expected signing of Contract |

2. Project Schedule for Fiscal Year Audit (Year ending June 30, 2018)

1. The Outside Auditor shall provide the Inyo County Auditor Controller with an audit plan, including a list of schedules and other work requested, no later than August 31, 2018.
2. Depending on the type and extent of interim audit procedures, the Inyo County Auditor Controller expects to have all records, prepared by client lists and schedules ready for the audit field work by mid-October and would expect field work to commence no later than the third week of October.
3. The Outside Auditor shall complete field work in time to allow preparation of the draft financial statements and discussion of the draft statements with Inyo County Auditor-Controller staff by December 31, 2018.
4. A draft of the management letter shall also be provided by December 31, 2018. ESTA staff shall have the opportunity to discuss and comment upon any findings and recommendations prior to issuance.
5. Final Draft Financial Statements. The Report to the ESTA Board of Directors and Management is required to be submitted to the Auditor-Controller by January 10, 2019 to enable management to respond and present the Report with management's responses to ESTA's Board of Directors. The final draft financial statements are to be submitted as an electronic file (pdf). The Outside Auditor is not required to present the report to the ESTA Board of Directors.
6. The final audited financial statements shall be issued in electronic format (pdf) no later than March 1, 2019. The final version of the management letter shall be issued by March 1, 2019.
7. Additionally, the Outside Auditor will prepare the Transit Operators Financial Transactions Report for the State Controller's Office and submit this including a copy of your auditor's report to the Auditor-Controller and the State Controller by the required deadlines for each year.

A similar schedule will be developed for audits of subsequent fiscal years.

3. Assistance Provided to the Outside Auditor

County of Inyo Auditor-Controller staff will be available during interim and audit field work to assist the firm by providing access and direction to information, documentation, and be available for explanations of all inquiries. Staff will provide clerical assistance for preparation of confirmations and other routine correspondence. The County of Inyo Auditor-Controller or the ESTA Executive Director will be responsible for the preparation of the Management Discussion and Analysis (MD&A).

ESTA and the County of Inyo Auditor-Controller will provide the Outside Auditors with reasonable workspace, phone, wireless internet access and copy machine.

4. Additional Services

If it should become necessary for ESTA to request the Outside Auditor to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between ESTA and the Outside Auditor. Any such additional work agreed to between the County of Inyo Auditor and the Outside Auditor shall be performed at the same rates set forth in the schedule of fees and expenses included in the Proposal Data Sheet and the contents of the Technical Proposal.

5. Payment

Progress payments will be made on work completed during the course of the engagement. Interim billings shall cover a period of not less than a calendar month.

V. Proposal Requirements

A. Format of Technical Proposal

1. Title page
 - a) the RFP subject,
 - b) the proposing firm's name,
 - c) contact person's name, local address, telephone number, and email address. If the firm has more than one office, state which office will be responsible for providing services to ESTA, and
 - d) the date of submission.

2. Table of Contents

- a) identification of material submitted, by section and page number, and

3. Transmittal Letter

- a) general introduction stating the proposer's understanding of the services to be provided,
- b) a positive commitment to perform the service within the time period specified,
- c) a statement why the firm believes itself to be best qualified to perform the engagement,
- d) a statement of how long you have been in business and how many financial audits were performed by your firm for public agencies during the past five (5) years,
- e) a statement that the proposal is a firm and irrevocable offer for the stated period of time,
- f) name(s) of person(s) authorized to represent the proposer, title, address, telephone number, email address and
- g) signature.

B. Contents of Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the firms seeking to undertake an independent audit of ESTA in conformity with the requirements of this RFP. The substance of proposals will carry more weight than their form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the RFP requirements.

The Technical Proposal should address all the points outlined in the RFP. The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the RFP. While additional data may be presented, the areas detailed below must be included. They represent the criteria against which the proposal will be evaluated.

1. License to Practice in California

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in California.

2. Independence

The firm should provide affirmative statement that it is independent of County of Inyo Auditor-Controller and ESTA as defined by generally accepted auditing standards and the US General Accounting Office's *Government Auditing Standards*.

The firm should also list and describe the firm's professional relationships involving ESTA and/or the County of Inyo Auditor-Controller for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.

In addition, the firm shall give ESTA written notice of any professional relationships entered into during this period of this agreement.

3. Insurance Requirements

See attached sample of Outside Auditor Contract and insurance requirements. State the firm's ability or inability to comply with these insurance requirements.

4. Firm Qualification and Experience

This section should provide a brief description of the Proposer's qualifications for furnishing the financial auditing services, including the organization, size and years in business.

EXPERIENCE - This section should contain a concise description of the proposer's background and experience in providing auditing services to governmental organizations similar to those outlined in the Scope of Work, listing at least three projects within the last three years (not including any projects completed for ESTA). The information submitted should include:

- Name, address, and telephone number of the responsible official of the organization
- Cost of the contract
- Dates services encompass
- Services provided
- The status of the contract

KEY PERSONNEL – this section should contain resumes for key personnel identified as being assigned to the ESTA contract. The resume should feature all job experience over the past three years including:

- Positions held
- Primary responsibilities and length of employment and locations for each position

- Education
- Professional registrations or certifications
- Professional affiliations
- Key skills
- Years employed by proposer
- Total years of professional experience in providing financial auditing services
- Current assignment and location

5. Specific Audit Approach

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed to perform the services required in Section III of this RFP.

a) proposed segmentation of the audit work:

1. What will be accomplished during interim and what at year end?
2. What other contact can the Outside Auditor expect during the year related to the audit engagement?

b) expectations of ESTA and Auditor-Controller staff:

1. What documents and working papers are expected to be provided by ESTA and Auditor-Controller staff during interim and year end work? Please provide sample Prepared by Client (PBC) lists and schedules for each section of the audit field work.

c) proposed time frame for each segment of audit work:

1. What is the anticipated length of field work for interim and year end work?
2. What is the standard turnaround time from end of field work, to senior level review, to final draft, to partner review, to audit report issuance?

d) planned number of hours on the engagement for each level of auditing staff.

e) sample size and the extent to which statistical sampling is to be used in the engagement.

- f) type and extent of use of software in the engagement.
- g) type and extent of analytical procedures to be used in the engagement.
- h) approach to be taken to gain and document an understanding of ESTA's internal control structure.
- i) approach to be taken in determining laws and regulations that will be subject to audit test work.
- j) approach to be taken in drawing audit samples for purposes of tests of compliance.

6. Identification of Anticipated Potential Audit Problems

The proposer should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems, and any special assistance that will be required from the Auditor-Controller.

11. Additional Information Required

What additional information would you require from ESTA and/or the Auditor-Controller, if you were selected to provide audit services, before you accepted the engagement?

12. Price

A Total All-Inclusive Price is to be provided on the Appendix A form for the preparation of the financial statements and preparation and submittal of required reporting for each of the three years of the 2018-2021 engagement. The cost for the preparation of a Single Audit, if required, should be proposed separately and should not be included in the All-Inclusive Price. The all-inclusive price should include the deliverables of ten (10) hard-copies and one electronic (.pdf) copy of the financial statements

VI. EVALUATION PROCEDURES

Proposals will be evaluated using three sets of criteria. Firms meeting the mandatory criteria will have their proposal evaluated and scored for both technical qualifications and price. The following represents the principal selection criteria, which will be considered during the evaluation process:

1. Mandatory Elements:

- a. The audit firm is independent, insured and licensed to practice in California.
- b. The firm has no conflict of interest with regard to any other work to be performed for the Auditor-Controller or ESTA.
- c. The firm adhered to the instructions in the RFP.

2. Technical Quality:

a. Expertise and Experience

- i. The firm has substantial past experience in performing the required audits on government agencies comparable to the ESTA.
- ii. The quality and stability of the firm's professional staff to be assigned to the engagement and the quality of the firm's management support personnel to be available for technical consultation is acceptable to ESTA.
- iii. In addition, special consideration will be given to firms submitting a copy of their most recent external quality control review report and the firm that has a record of quality work.

b. Audit Approach:

- i. The firm provided proposed plans for the various segments of the engagement which are acceptable to ESTA.
- ii. The firm presented a thorough understanding of the objectives, scope and issues for this type of engagement.
- iii. Adequacy of proposed staffing plan.
- iv. Adequacy of sampling techniques.
- v. Adequacy of analytical procedures.
- vi. The firm is committed to the timeliness in the conduct and completion of the audit.

3. Price: Evaluation of the maximum fee to conduct the audit. Price will not be the primary factor in selection of an audit firm.

APPENDIX A

Price Proposal Form Request for Proposal: Financial Audit Services

The following lump sum proposal prices includes all costs for labor, materials, taxes, insurance, overhead, travel, profits, and all other costs necessary to perform the work in accordance with the contract documents.

Audit Pricing

	Annual Financial Audit	Single Audit (if necessary)
Year 1	\$	\$
Year 2	\$	\$
Year 3	\$	\$
Pricing for option years shall be negotiated and mutually agreed to by the parties. It is expected that rate increases for option years would not exceed appropriate inflationary metrics.		

SIGNED:

The undersigned certifies that this Price Proposal Form is signed with full and proper authorization to do so.

Company Name

Signature, Printed Name, Title, Date

**PROFESSIONAL SERVICES
AGREEMENT FOR AUDITING SERVICES**

THIS AGREEMENT is made and entered into this ___ day of July, 2018, by and between the EASTERN SIERRA TRANSIT AUTHORITY, a joint powers authority, hereinafter referred to as "ESTA", and _____, a professional corporation hereinafter referred to as "AUDITOR".

IN CONSIDERATION of the covenants hereinafter set forth, the parties hereto mutually agree as follows:

ARTICLE I

SCOPE OF AUDITOR'S SERVICES

AUDITOR shall perform auditing services and duties that are set forth in Exhibit "A" to this Agreement, which is attached hereto and incorporated herein by this reference. ESTA shall notify AUDITOR on or before August 31 of each year of the agreement, in writing, whether or not AUDITOR'S services shall include: (a) a single audit of federal financial assistance; and/or (b) preparation of ESTA'S comprehensive annual financial report (CAFR); and/or (c) preparation of ESTA's State Controller's Reports.

Notwithstanding services described above, ESTA may request and AUDITOR may agree to perform other services. The scope of such services and compensation shall be agreed to in writing, signed by both parties and shall become a part of this Agreement.

ARTICLE II

PERFORMANCE OF SERVICES

AUDITOR shall perform all services and duties pursuant to this Agreement in a professional and timely manner, at the direction of the Executive Director, or his designee. All directives, instructions, or other communications from ESTA to AUDITOR shall be through only the Executive Director, or his designee.

ARTICLE III

TERM

This Agreement shall commence on _____, and shall terminate on upon completion of audit services for fiscal years ending June 30, 2018 through June 30, 2020,

as listed in Exhibit "B". The term of this agreement may be extended to include audit services for subsequent fiscal years, with written authorization from the Executive Director.

ARTICLE IV

COMPENSATION FOR SERVICES

ESTA shall pay AUDITOR for auditing services rendered and costs incurred pursuant to this Agreement in accordance with the amounts set forth in Exhibit "B". Notwithstanding any and all provisions of this Agreement, in no event shall compensation for the services exceed the amounts identified in Exhibit "B" each fiscal year, unless authorized in writing by ESTA.

All payments due AUDITOR shall be paid to:

AUDITOR will submit invoices monthly for the percentage of work completed in the previous month. ESTA agrees to pay all undisputed invoice amounts within thirty (30) days of receipt of the invoice. ESTA agrees to use its best efforts to notify AUDITOR of any disputed invoice amounts within ten (10) days of the receipt of each invoice. However, ESTA'S failure to timely notify AUDITOR of a disputed amount shall not be deemed a waiver of ESTA'S right to dispute such amount or percentage.

ARTICLE V

PERSONNEL

AUDITOR shall provide all personnel necessary to properly perform the services and duties required under this Agreement, and shall at all times direct such personnel in the performance of such services and duties. _____ will lead the audit and shall serve as the principal liaison between ESTA and AUDITOR.

ARTICLE VI

DUTIES OF ESTA

ESTA shall provide or make available to AUDITOR, without charge or expense, all information, data, records, maps, reports, plans, equipment, or other material in its possession necessary for carrying out the services and duties contemplated under this Agreement.

ARTICLE VII

OWNERSHIP OF DOCUMENTS

ESTA and AUDITOR agree that all records, data, reports or other documentation prepared by AUDITOR, in response to, or as a result of the performance of this Agreement shall be the sole property of AUDITOR. ESTA and AUDITOR acknowledge and agree that all records, data, reports or other documentation prepared by AUDITOR pursuant to this Agreement shall be retained by AUDITOR for five years after the date of the audit report, or for any additional period requested by a body having regulatory authority over ESTA.

ARTICLE VIII

CONFLICT OF INTEREST

- A. All information gained by AUDITOR in performance of this Agreement shall be considered confidential and shall not be released by AUDITOR without ESTA'S prior written authorization excepting that information which is a public record and subject to disclosure pursuant to the Public Records Act (Government Code Section 6250 et seq.). AUDITOR, its officers, employees, agents, or subcontractors, shall not voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning ESTA or cooperate in any way with a party who may be adverse to ESTA or whom AUDITOR reasonably should know may be adverse in any subsequent litigation. AUDITOR shall incur no liability under this Agreement for material submitted by it, which are later released by ESTA, its officers, employees, or agents. AUDITOR shall also incur no liability for statements made by it at any public meeting, or for any document released by it for which prior written ESTA authorization was obtained.

If AUDITOR or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Agreement, ESTA has the right to reimbursement and indemnity from AUDITOR for any damages caused by AUDITOR'S conduct, including without limitation reasonable attorney's fees.

AUDITOR shall promptly notify ESTA should AUDITOR, its officers, employees, agents or subcontractors be served with any Summons, Complaint, Subpoena, Notice of Deposition, Request for Documents, Interrogatories, Request for Admissions or other discovery requests from any party regarding this Agreement and the work performed hereunder, ESTA retains the right, but not the obligation, to represent AUDITOR and/or to be present at any deposition, hearing, or similar proceeding. AUDITOR agrees to cooperate fully with ESTA and to provide ESTA with the opportunity to review any response to discovery requests provided by AUDITOR. However, ESTA'S right to review any such response does not imply or mean the right by ESTA to control, direct, or rewrite said response.

ESTA warrants that AUDITOR will have fully met the requirements of this provision

by obtaining ESTA'S written approval prior to providing documents, testimony, or declarations; Consulting with ESTA before responding to a Subpoena or court order; in the case of depositions upon providing Notice to ESTA of same; or providing ESTA opportunity to review discovery responses prior submission. For purposes of this section, a written authorization from ESTA shall include a "faxed" letter.

- B. AUDITOR covenants that neither it nor any officer or principal of its firm have any interest, nor shall they acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. AUDITOR further covenants that in the performance of this Agreement, no person having such interest shall be employed by it as an officer, employee, agent, or subcontractor. AUDITOR further covenants that AUDITOR has not contracted with nor is performing any services, either directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in ESTA or the study area and further covenants and agrees that AUDITOR and/or its subcontractors shall provide no service or enter into any contract with any developer(s) and/or property owner(s) and/or firm(s), and/or partnership(s) owning property in ESTA and/or study area prior to completion of this Agreement.

ARTICLE IX

INDEMNIFICATION

- A. Indemnification. AUDITOR will defend, indemnify and hold harmless ESTA, its Board of Directors, Auditor-Controller, Treasurer and its officers, employees and agents (collectively "ESTA"), against any claim, loss or liability that arises because of the sole or primary negligence or willful misconduct of AUDITOR, its agents, officers or employees, in performing any of the services under this Agreement. ESTA will indemnify and hold harmless AUDITOR, its agents, officers or employees against any claim, loss or liability that arises because of the sole or primary negligence or willful misconduct of ESTA personnel or its other agents or if AUDITOR is named as a party in a lawsuit simply because AUDITOR is performing work on ESTA'S behalf and there is no allegation of any wrongdoing on the part of the AUDITOR.

ARTICLE X

INSURANCE

- A. Without limiting Auditor's indemnification of Agency, and prior to commencement of Work, Auditor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

- B. **General liability insurance.** Auditor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, 2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
- C. **Automobile liability insurance.** Auditor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Auditor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than 1,000,000 combined single limit for each accident.
- D. **Professional liability (errors & omissions) insurance.** Auditor shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Auditor agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- E. **Workers' compensation insurance.** Auditor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

Auditor shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of ESTA, its officers, agents, employees and volunteers.

- F. **Notice of Cancellation.**
- i. All insurance policies shall provide that the insurance carrier shall not cancel the insurance coverage without thirty (30) days prior written notice to ESTA. AUDITOR agrees that it will not cancel or reduce said insurance coverage.
 - ii. AUDITOR agrees that if it does not keep the aforesaid insurance in full force and effect, ESTA may immediately terminate this Agreement.
- G. **Certificate of Insurance.** At all times during the term of this Agreement, AUDITOR shall maintain on file with ESTA certificates of insurance showing that the aforesaid policies are in effect in the required amounts. AUDITOR shall also provide a Waiver of Subrogation endorsement in favor of ESTA, its officers, agents, employees and volunteers.
- H. **Primary Coverage.** The insurance provided by AUDITOR shall be primary to any

coverage available to ESTA in relation to the services provided under this Agreement. The insurance policies (other than worker's compensation and professional liability) shall include provisions for waiver of subrogation.

ARTICLE X

TERMINATION

- A. If, at any time during the term of this Agreement, ESTA determines, at its sole reasonable discretion, that AUDITOR is not faithfully abiding by any term or condition contained herein, ESTA may notify AUDITOR in writing of such defect or failure to perform; which notice must give AUDITOR ten (10) days to cure the defect or failure to perform. If AUDITOR has not performed the work or cured the defect to the satisfaction of ESTA, ESTA may terminate this Agreement immediately by written notice to the AUDITOR to said effect.
- B. If, at any time during the term of this Agreement, AUDITOR reasonably determines that ESTA is not abiding by any material term or condition contained herein, AUDITOR may notify ESTA in writing of such defect or failure to perform; which notice must give ESTA thirty (30) days to cure the defect or failure to perform. If ESTA has not performed the work or cured the defect to the satisfaction of AUDITOR, AUDITOR may terminate this Agreement immediately by written notice to ESTA to said effect.
- C. Notwithstanding the provision of the above, ESTA and AUDITOR may terminate this Agreement upon completion of the services contained in Article I of this Agreement, upon providing the other party thirty (30) days written notice.

Thereafter, neither party shall have any further duties, obligations, responsibilities or rights under this Agreement. In said event, AUDITOR shall be entitled to the reasonable value of its services performed from the beginning of the period in which the breach occurs up to the day of notice of termination, less any offset from such payment representing ESTA'S damages from such breach. ESTA reserves the right to delay any such payment so as to permit a full and complete accounting of the cost of damages. In no event, however, shall AUDITOR be entitled to receive compensation in excess of the amount provided in this Agreement. Any and all obligations of AUDITOR'S surety shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by termination of this Agreement.

ARTICLE XI

GENERAL PROVISIONS

- A. Fair Employment Practices/Equal Opportunity Acts. In the performance of this Agreement, AUDITOR shall comply with all applicable provisions of the California Fair Employment Practices Act (California Government Code Sections 12940-48) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S.C. 200e-217), whichever is more restrictive.
- B. Non-discrimination. AUDITOR shall not discriminate as to race, creed, religion, gender, color or national origin in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of ESTA relating thereto.
- C. Legal Action.
- i. Should either party to this Agreement bring legal action against the other, the case shall be handled in Los Angeles County, California. The party prevailing in such action shall be entitled to reasonable attorney's fees, which shall be fixed by the judge hearing the case, and such fee shall be included in the judgment.
 - ii. Should any legal action about a project between ESTA and a party other than AUDITOR require the testimony of AUDITOR when there is no allegation that AUDITOR was negligent, ESTA shall compensate AUDITOR for its testimony and preparation to testify at the hourly rates in effect at the time of such testimony.
- D. Compliance with Applicable Law. AUDITOR and ESTA shall comply with all applicable laws, ordinances and codes of the federal, state and local government.
- E. Assignment. This Agreement shall not be assignable by either party without the prior written consent of the other party. Notwithstanding the foregoing, AUDITOR may use the services of persons and entities not in its employ, when it is appropriate and customary to do so upon prior approval by ESTA. AUDITOR'S use of others for ESTA shall not unreasonably restrict additional services, provided AUDITOR notifies ESTA in advance.
- F. Independent Contractor. AUDITOR is and shall at all times remain, as to ESTA, a wholly independent contractor. Neither ESTA nor any of its agents shall have control over the conduct of AUDITOR or any of AUDITOR'S employees, except as herein set forth. AUDITOR expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees, are in any manner the agents, servants or employees of ESTA, it being distinctly understood that AUDITOR is, and shall at all times remain to ESTA, a wholly independent contractor and AUDITOR'S obligations to ESTA are solely such as are prescribed by this Agreement.

- G. Titles. That titles used in this Agreement are for general reference only and are not part of this Agreement.
- H. Extent of Agreement. This Agreement and Exhibits "A", "B", and "C" hereto represent the entire and integrated Agreement between ESTA and AUDITOR and supersede all prior negotiations, representations or Agreements, written or oral. This Agreement may be modified or amended only by a subsequent written Agreement signed by both parties.
- I. Legal Construction
- i. This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.
 - ii. This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
 - iii. The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.
 - iv. Whenever in this Agreement the context may so require, each gender shall be deemed to refer to and include any other gender and the singular shall refer to and include the plural.
- J. The EASTERN SIERRA TRANSIT AUTHORITY will be required to sign an annual engagement letter as required by Governmental Auditing Standards. The terms of these Engagement Letters are incorporate by reference into this agreement (Exhibit "C").
- K. Notices. All notices pertaining to this Agreement shall be in writing and addressed as follows:

If to AUDITOR:

If to ESTA:

Executive Director
Eastern Sierra Transit Authority
P.O. Box 1357
Bishop, CA 93515

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

AUDITOR

By: _____

(Title)

Dated: _____

EASTERN SIERRA TRANSIT AUTHORITY

By: _____
Executive Director

Dated: _____

EXHIBIT A

**AGREEMENT BETWEEN THE EASTERN SIERRA TRANSIT AUTHORITY
AND _____
FOR THE PROVISION OF FINANCIAL AUDIT SERVICES**

TERM:
FROM: _____ **TO:** _____

SCOPE OF WORK:

DRAFT

EXHIBIT B

**AGREEMENT BETWEEN THE EASTERN SIERRA TRANSIT AUTHORITY
AND _____
FOR THE PROVISION OF FINANCIAL AUDIT SERVICES**

TERM:
FROM: _____ **TO:** _____

COMPENSATION FOR SERVICES:

DRAFT

EXHIBIT C

**AGREEMENT BETWEEN THE EASTERN SIERRA TRANSIT AUTHORITY
AND _____
FOR THE PROVISION OF FINANCIAL AUDIT SERVICES**

TERM:
FROM: _____ **TO:** _____

ENGAGEMENT LETTER TERMS:

DRAFT