

AGREEMENT FOR PROFESSIONAL SERVICES

Title of Grant

THIS AGREEMENT made and entered into this first day of 2014, in Ukiah, California, by and between the **MENDOCINO TRANSIT AUTHORITY**, a Joint Powers Agency, hereafter referred to as "MTA", and (name of selected firm), hereafter referred to as "Contractor".

In consideration of the mutual promises set forth in this Agreement, the parties agree as follows:

1. **DOCUMENTS INCLUDED.** This agreement includes the following documents, which are incorporated herein by this reference, and supersedes any conflicting provisions within them:

- a. Request for Proposals for this project, dated March 17, 2014
- b. Proposal of (selected firm), dated
- c. Exhibit A: Scope of Work, Schedule and Price.

2. **SERVICES TO BE PERFORMED BY CONTRACTOR.** Contractor shall perform those services described in the Scope of Work, on the Schedule provided therein, which are hereby incorporated and attached hereto as Exhibit A.

All services performed by Contractor shall be in a manner that is compatible with the professional and technical standards of the disciplines involved. The final product must be written in a manner satisfactory to the MTA Board of Directors.

3. **TERM.** The term of this Agreement shall commence on 2014 and, unless otherwise terminated in accordance with Paragraph 14 of this Agreement, shall end on 2015. Extensions of the above term may be made only upon written authorization by the MTA. Time is of the essence and of the utmost importance in the performance of this Agreement.

4. **COMPENSATION.** MTA shall pay to Contractor the total sum not to exceed _____ for services contractor is to perform under this Agreement. The Budget shown in Exhibit A sets forth the agreed cost of the work by task.

Contractor shall submit an itemized billing statement to the MTA

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General Manager no more often than every thirty (30) days. The billing statement shall specify the hours and cost of work completed, during the period covered, for each task, and shall include a progress report, showing what was completed, and any problems or delays encountered. The billed amount shall be reduced by a ten percent retention.

Consultant "mark-up" of direct expenses or of subcontractor invoices are not allowable (unless **Consultant** can support that the mark-up is an actual incurred cost exclusive of the overhead rate), therefore **MTA** will not pay **Consultant** for any such increases to actual costs incurred.

Travel and Per Diem Reimbursement. Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates are not commercially available to **MTA, Contractor** or its subcontractors at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process. For more information, refer to:
<http://www.dot.ca.gov/hq/asc/travel/ch12/1consultant.htm>

The MTA General Manager shall review the billings and may approve them for payment or adjust them after consultation with Contractor. A sum equal to ten percent of the approved billing shall be withheld until delivery and acceptance of the final product. The MTA shall pay approved contractor billings within fifteen (15) days of receipt.

5. **COMPLIANCE.** Contractor, in the conduct of the services contemplated hereunder, shall comply with all statues, State or Federal, and all ordinances, rules and regulations enacted or issued by the County of Mendocino.

6. **INDEPENDENT CONTRACTOR.** Contractor is not an employee of MTA and is not entitled to any of the rights, benefits or privileges of MTA employees including, but not limited to, medical or Workers Compensation insurance. The parties intend to and have entered into a bonafide independent contract and nothing herein is a subterfuge to avoid making the Contractor an employee of the MTA. Contractor shall have control of the means, methods and details of performing the work and shall only be subject to the general direction and supervision of the MTA to insure that results contracted for are achieved per plans and specifications

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provided to the Contractor. Contractor expressly warrants and agrees that it will exercise its own independent judgments in evaluating the accuracy and reliability of all data, technical reports and studies prepared by the MTA, its officers, agents, employees and subcontractors or prepared by any other person or entity not a party to this agreement.

7. **HOLD HARMLESS.** Contractor shall assume the defense of, and indemnify and save harmless, the MTA, its officers, and each and every employee and agent thereof from all suits, actions, damages, claims or losses to which the MTA may be subjected or put because of or arising out of Contractor's negligent performance under this Agreement. In providing the indemnification of MTA provided in this Agreement, Contractor agrees to provide for all costs of any necessary legal defense.

8. **WORKERS COMPENSATION INSURANCE.** Before beginning the work, the Contractor shall furnish to the MTA satisfactory proof that it has secured, for the period covered under this Agreement, Workers Compensation Insurance for all persons whom it may employ directly or through subcontractors, in carrying out the work completed under this Agreement, in accordance with the "Workers Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any acts amendatory thereof. Such insurance shall be maintained in full force and effect during the period covered by this Agreement.

The Contractor shall sign and file with the MTA a Workers Compensation Certificate prior to performing any work.

9. **AUTOMOBILE LIABILITY, PROPERTY DAMAGE AND PERSONAL INJURY INSURANCE.** Contractor shall maintain in effect during the term of this Agreement such comprehensive automobile liability insurance, provided by companies licensed to furnish such insurance in the State of California, as shall protect the MTA, its officers, agents, and employees and the Contractor from claims which may arise from the Contractor's performance under this Agreement, whether such performance be by the Contractor or by its employees, subcontractors, consultants, agents, or anyone directly or indirectly employed by any of the foregoing. The liability insurance shall include, but not be limited to, protections against claims arising from bodily or personal injury or damage to property resulting from operations of the Contractor or by its employees, subcontractors, consultants, or anyone directly or indirectly employed by foregoing. The amount of insurance shall be not less than One Million Dollars (\$1,000,000)

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single limit coverage applying to bodily and personal injury and property damage, or a combination of both.

In addition, Contractor shall maintain in effect during the term of this Agreement at the Contractor's sole expense, such COMPREHENSIVE PUBLIC LIABILITY insurance provided by companies licensed to furnish such insurance in the State of California, to protect the MTA, its officers, agents, and employees and the Contractor from claims which may arise from the Contractor's performance under this Agreement, whether such performance be by the Contractor or by its employees, subcontractors, consultants, agents, or anyone directly or indirectly employed by any of the foregoing. The liability insurance shall include, but not be limited to, protection against claims arising from bodily or personal injury or damage to property resulting from Contractor's performance of services under this Agreement. The amount of insurance shall be not less than One Million Dollars (\$1,000,000) single limit coverage applying to bodily and personal injury and property damage, or a combination of both.

Such insurance shall include a provision or endorsement naming the MTA, its officers, agents and employees, as an additional insured with respect to liability arising out of the performance of any work or services to be performed by Contractor under this Agreement, and providing that such insurance is primary insurance with respect to the interests of the MTA, and that any other insurance maintained by the MTA is excess and not an alternative source or contributing insurance with insurance required here.

10. **CERTIFICATES OF INSURANCE.** Promptly upon execution of this Agreement, and prior to commencement of any work, Contractor shall provide the MTA with certificates of insurance required by Paragraphs 8 and 9 above. Approval of the insurance by the MTA shall not relieve or decrease the liability of the Contractor.

11. **FEDERAL REQUIREMENTS AND STATE REQUIREMENTS.**

a. **Disadvantaged Business Enterprise (DBE) Obligation.** It is the policy of the U.S. Department of Transportation that minority- and women-owned business enterprises (hereby referred to as DBEs) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement.

The recipient or its contractor agrees to ensure that DBEs have

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the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT assisted contracts.

b. Title VI of the Civil Rights Act of 1964. The contractor agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (49 USC 2000d) and the regulations of the U.S. Department of Transportation issued thereunder in 49 CFR Part 21.

c. Equal Employment Opportunity. In connection with the performance of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

d. Cost Principles. MTA and Contractor agree, and all subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual Project cost items and (b) all parties shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. For more information, refer to:
<http://www.gpoaccess.gov/nara/index.html>.

e. Record Retention and Audits. MTA, Contractor and all subcontractors shall maintain all source documents, accounting records, and other supporting papers connected with performance of work under this Agreement for a minimum of three (3) years from the date of final payment, or until annual audit resolution is achieved, whichever is later. All such supporting information shall be made available for inspection and audit by representatives of State of California Department of Transportation (**State**), the

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California State Auditor, and auditors representing the federal government. Copies will be made and furnished by **MTA** upon request, at no cost to **State**.

MTA, Contractor and all subcontractors shall each establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP), to support invoices and requests for reimbursement that segregate and accumulate project costs by line item, and can produce interim (quarterly) reports that clearly identify reimbursable costs and other expenditures for the project.

f. **Non-Discrimination.** In the performance of work under this Agreement, **MTA, Contractor** and its subcontractors shall not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family and medical care leave and denial of pregnancy disability leave. **MTA, Contractor** and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. **MTA, Contractor** and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made part hereof as if set forth in full. **MTA, Contractor** and its subcontractors shall each give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other labor agreement. **MTA, Contractor** and its subcontractors will permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by **State** to investigate compliance with this section.

12. FINANCIAL INTEREST. The Contractor covenants that it 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. The Contractor further covenants that

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in the performance of this Agreement, no person having any such interest shall be employed or subcontracted.

13. **LIQUIDATED DAMAGES FOR DELAY.** It is agreed by the parties to this Agreement that time is of the essence and that in case all work is not completed before or upon the expiration of the time limit set forth herein, the MTA will sustain damages, the exact amount of which is and will be impractical to determine; and it therefore is agreed that the MTA will deduct from payments the sum of One Hundred Dollars (\$100) per day for each and every calendar day's delay caused by Contractor beyond the time prescribed in Exhibit A herein for completion of the Agreement. Delays caused by MTA, any other public agency, or any other contractor working for MTA and not Contractor, shall be computed to extend the time prescribed in Exhibit A.

14. **TERMINATION OF AGREEMENT BY MTA.**

a. If, through any cause, Contractor fails to fill its obligation under this Agreement in a timely and proper manner, or if the Contractor violates any of the covenants, terms or provisions of this Agreement, the MTA may terminate this Agreement by giving seven (7) days written notice to Contractor of such termination. In the event of termination, all finished or unfinished documents, data, studies, and reports prepared by Contractor under this Agreement shall become the MTA's property; and Contractor shall deliver such documents to the MTA General Manager within two (2) business days from the date that this Agreement is terminated.

Contractor shall not be relieved of liability to MTA for damages sustained by MTA by virtue of any breach of the Agreement by Contractor, and MTA may withhold any payment to Contractor for the purpose of setoff until such time as the exact amount of damages due MTA from Contractor is determined.

b. MTA may terminate this Agreement in the absence of a default by Contractor by sending a written notice of termination to Contractor. If the Agreement is terminated by MTA as provided herein, Contractor will be paid an amount which bears the same ratio to the total compensation as the work actually completed bears to the total work of Contractor covered by this Agreement, less payments of compensation previously made.

15. **NOTICE.** Whenever notice to a party is required by this Agreement, it shall be deemed given when deposited with proper address and postage in the U.S. Mail or when personally delivered

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or FAXed as follows:

MTA: MENDOCINO TRANSIT AUTHORITY
241 Plant Road
Ukiah, California 95482
(707) 462-1760

Contractor: _____

IN WITNESS WHEREOF, the Mendocino Transit Authority and Contractor have executed this Agreement on the day and year first written above.

FOR
CONTRACTOR

FOR
MENDOCINO TRANSIT AUTHORITY

By: _____ by: _____
Dan Baxter,
General Manager