

REQUEST FOR PROPOSALS

Procurement by Small Purchase Procedures

ZERO EMISSION VEHICLE (ZEV) & ALTERNATIVE FUELS READINESS PLAN UPDATE

IN MENDOCINO COUNTY



MENDOCINO COUNCIL OF GOVERNMENTS

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Mendocino Council of Governments

367 North State St., Suite 204

Ukiah, CA 95482

December 5, 2018

I. INTRODUCTION

A. The Region

Mendocino Council of Governments (MCOG) is the Regional Transportation Planning Agency for the rural Mendocino countywide region along the North Coast of California. State Routes 1 and 101 are the north-south corridors, and State Routes 20 and 128 are major east-west corridors. Air quality in the Mendocino County Air Quality Management District (MCAQMD) is generally good; vehicles represent one of the largest sources of emissions in the district. The region is still in economic recovery and fuel costs are an important factor considering the distances that many people cover daily. Tourism is a major driver of the economy, so many local businesses seek to attract visitors, especially from the urbanized areas to the south. Over the past four decades, Mendocino County residents have been leaders in renewable energy and alternate-fuel transport, with a spirit of innovation and self-reliance, local community identities, and strong environmental values.

B. Organization and Management

This third phase of the Zero Emission Vehicle (ZEV) Regional Readiness Plan is managed as a work element in MCOG's Fiscal Year 2018/19 Transportation Planning Work Program and is overseen by MCOG's planning staff. It is funded by Rural Planning Assistance (RPA) funds from the California Department of Transportation (Caltrans).

C. Previous Work Relevant to Project

- 2013 - Mendocino County Zero Emission Vehicle (ZEV) Regional Readiness Plan, Phase 1
- 2015 - Mendocino County ZEV Regional Readiness Plan, Phase 2 – Feasibility Report
- 2014 to 2016 - MCOG participated in the five-county Northwest California Alternative Transportation Fuels Readiness Project
- 2014 to 2017 - MCOG provided technical support and supplemental funding to the Mendocino Land Trust's project "Bringing Electric Vehicle Charging Stations to Mendocino County State Parks"
- 2016 - MCOG partnered with ChargePoint, a leading equipment manufacturer and network operator, on the Mendocino Express Interregional Corridor Project to install electric vehicle fast chargers along US-101 through northern Sonoma and Mendocino counties as part of a statewide network
- 2017 - MCOG participated in the North Coast and Upstate Fuel Cell Readiness Project to prepare eight of California's northernmost counties for the introduction of fuel cell electric vehicles, funded by the California Energy Commission (CEC) and completed in 2018.

II. PROJECT DESCRIPTION

The Mendocino Council of Governments (MCOG) will hire a consultant (through a competitive procurement process) to update the Mendocino County Zero Emission Vehicle (ZEV) Regional Readiness Plan, developed in 2013 by MCOG in partnership with the Mendocino County Air Quality Management District. This Plan update project will also integrate recent alternative fuels interregional planning into the document. A ZEV advisory group (ZAG) will be formed to assist with the plan and function into the future as the Plug-In Electric Vehicle Coordinating Council for the region. The consultant will prepare the Plan update, working closely with MCOG and the ZAG representing local governmental agencies and key stakeholders. For reference: the adopted Plan and Feasibility Report are available at <https://mendocinocog.specialdistrict.org/mendocino-county-regional-plans>.

Overall Project Objective:

- Revise the existing plan to reflect changes over the past five years, address deficiencies, and update steps to implementation.
- Form an ongoing advisory group (ZAG) for this planning effort and to function as the regional Coordinating Council for purposes of grant funding, to provide support for future projects that implement the Plan, to serve as a users' group, to review plans and permits for consistency and best practices, and other relevant purposes.
- Create the underlying visionary guidance document for funding and buildout of infrastructure allowing local jurisdictions and the Mendocino County region to keep pace with statewide development of emergent transportation technology.
- Provide more travel choices for citizens of the region, develop the region's economy through enhanced tourism opportunities, protect the environment, and mitigate the impacts of climate instability.

III. SCOPE OF WORK

Zero Emission Vehicle (ZEV) & Alternative Fuels Regional Readiness Plan Update

Task 1 Project Initiation

Task 1.1 Project Kick-off Meeting

- Hold a kick-off meeting with consultant to discuss Scope of Work and project expectations including invoicing (at least quarterly but not more frequently than monthly), quarterly reporting, and all other relevant project information. Provide an agenda and meeting summary.

Responsible Parties: MCOG, Consultant

| Task | Deliverable |
|------|--|
| 1.1 | Kick-off Meeting Agenda & Meeting Summary - MCOG |

Task 2 Coordination with Project Partners

Task 2.1 Identify Stakeholders and Form Advisory Group

- Develop a list of key stakeholders from existing and new contacts.
- Form a ZEV Advisory Group (ZAG), expected to include local government members of MCOG’s Joint Powers Agreement (County of Mendocino, Cities of Ukiah, Fort Bragg, Willits, and Point Arena), MCOG Administrative and Planning staff members, Mendocino County Air Quality Management District, Caltrans, utilities, and other key public, private and nonprofit stakeholders to provide input to the plan.

Responsible Parties: MCOG, Consultant, ZAG

Task 2.2 Meet with ZEV Advisory Group (ZAG)

- Convene a meeting (including call-in options) with the consultant and ZAG to discuss the intent, tasks and logistics of the project.
- Establish goals for the ZAG, such as formalizing a regional Coordinating Council to provide ongoing support for future projects to implement the plan, serving as a users’ group, reviewing plans and permits for consistency and best practices, supporting eligibility for certain infrastructure grant funding for EV charging station networks and other projects identified in the plan, and other relevant purposes.
- Meet with the ZAG at specified milestones (approximately 3-4 times) and prepare agendas and meeting notes for ZAG meetings.

Responsible Parties: MCOG, Consultant, ZAG

Task 2.3 Coordinate with Interregional Partners

- Review Northwest California Alternative Transportation Fuels Readiness Plan.
- Review North Coast and Upstate Fuel Cell Electric Vehicle (FCEV) Readiness Plan.
- With the ZAG and lead-agency interregional partners, identify anticipated needs, goals and tasks for the Mendocino countywide region in context of MCOG’s participation with these interregional planning efforts in the North State.
- Prepare draft Interregional section of Plan.

Responsible Parties: MCOG, Consultant, ZAG

| Task | Deliverable |
|-------------|---|
| 2.1 | Stakeholders List, ZAG Membership List – <i>Consultant (lead); MCOG</i> |
| 2.2. | Agendas, Meeting Notes – <i>MCOG</i> Goals & Objectives – <i>Consultant, ZAG</i> |
| 2.3 | Draft Interregional Section of Plan - <i>Consultant</i> |

Task 3 Existing Conditions

Task 3.1 Review Existing Plan, Compare with Real-World Conditions and Objectives

- Meet with MCOG staff to review installed charging sites versus existing plan goals and identify known changes to the Mendocino County ZEV Regional Readiness Plan and Feasibility Study.
- Consult with identified stakeholders to research how public and private entities are developing ZEV infrastructure in the region.
- Draft a technical memorandum to reflect findings of current status and trends.
- Distribute technical memorandum to MCOG staff and ZAG for review and comment; compile comments.

Responsible Parties: MCOG, Consultant, ZAG

| Task | Deliverable |
|-------------|---|
| 3.1 | Existing Conditions Technical Memorandum, Documentation of Comments - <i>Consultant</i> |

Task 4 Develop Draft Mendocino County Zero Emission Vehicle (ZEV) & Alternative Fuels Regional Readiness Plan

Task 4.1 Compile Relevant Sections of Existing ZEV Plan/Draft Outline and Structure of Plan Update

- Review Mendocino County ZEV Regional Readiness Plan and Phase 2 Feasibility Study for useful and still-relevant background, charging site data (property ownership, environmental conditions, site characteristics, parking availability, ease of access, zoning, safety, community site preferences, etc.), technical information, best practices and recommendations.
- Draft outline and structure of ZEV Plan update for MCOG staff review.

Responsible Parties: MCOG, Consultant

Task 4.2 Project Mapping and GIS Database

- Identify needed new and previously documented electric vehicle charging sites.
- Map proposed charging station sites in Google Earth and existing GIS database.

Responsible Parties: MCOG, Consultant

Task 4.3 Prepare Draft Plan

- Build on existing material and findings to date to reflect current needs, goals and objectives.
- Identify existing and planned public and private charging networks in Mendocino County.
- Compile and analyze data and opportunities for EV charging station locations. Distinguish between public and private opportunities. Summarize predominant concerns and issues as well as preferred alternatives.
- Determine appropriate equipment types for each recommended location, i.e. Level 2 and/or Level 3 (DC fast chargers).
- Prepare draft plan to address concerns and issues, through illustration of preferred locations, design and materials recommendations, and site features. Identify how the ZEV Regional Readiness Plan can best meet community goals to improve and promote use of plug-in electric vehicles. Consider connectivity of public and private ZEV networks. Identify existing or needed improvements to site locations. Document the design process, summarize issues and detail alternative solutions. Describe and support conclusions.
- Include new Interregional section of Plan (*from Task 2.3*).
- Include maps (*prepared by MCOG staff, Task 4.2*).
- Include various alternative fuels findings and recommended actions under consideration by relevant interregional plans.
- Include recommended Plan implementation and next steps.

Responsible Party: Consultant

Task 4.4 Present and Review Draft Plan

- Present Draft Plan first to MCOG staff for review, and then to ZAG.
- Make recommendations for implementation options by key stakeholders (such as local government entities and public-private partnerships) and other actions to further develop readiness and support for current and future implementation (such as estimated deployment to meet increasing demand of traveling public and legislation/ordinances as needed to implement accordingly).
- Compile feedback from the ZAG.

Responsible Parties: MCOG, Consultant, ZAG

| Task | Deliverable |
|-------------|---|
| 4.1 | Draft Plan Outline & Structure - <i>Consultant</i> |
| 4.2 | List of Proposed Locations - <i>Consultant</i> GIS Maps – <i>MCOG</i> |
| 4.3 | Draft Plan – <i>Consultant</i> |
| 4.4 | Summary of Comments on Draft Plan - <i>Consultant</i> ZAG Agenda & Meeting Notes – <i>MCOG</i> |

Task 6 Final Plan Preparation and Presentation

Task 6.1 Prepare Final Plan

- Prepare Final Mendocino County Zero Emission Vehicle (ZEV) & Alternative Fuels Regional Readiness Plan based on ZAG review and comments.

Responsible Party: Consultant

Task 6.2 Present Final Plan

- Present Final Plan with recommendations in a public hearing at a regular meeting of MCOG’s Board of Directors, for adoption and to supersede the existing adopted plan.
- Make any needed revisions to Final Plan, based on MCOG direction.
- Deliver Final Plan to MCOG.

Responsible Party: Consultant

| Task | Deliverable |
|------|---|
| 6.1 | Final Plan - Five (5) print copies and one electronic copy – <i>Consultant</i> |
| 6.2 | PowerPoint Presentation – Electronic copy - <i>Consultant</i> Adopted Final Plan incorporating revisions requested by MCOG - Five print copies and one electronic copy - <i>Consultant</i> |

IV. PROPOSAL REQUIREMENTS

A. Identification of Prospective Contractor & Signature

Include name of the firm, mailing address, telephone number, e-mail address, and name of an individual to contact for further information. Include a cover letter signed by an official authorized to bind the proposer contractually, with a statement to the effect that the proposal is a firm offer for a 90-day period.

B. Management & Personnel

Designate by name the project manager to be assigned to this project. The project manager or project team members shall not be substituted without prior written approval of the Mendocino Council of Governments. Describe qualifications of all professional personnel to be employed, include a resume' for each professional, and a statement indicating how many hours (estimated) each professional will be assigned to the contract and what tasks each professional will perform.

C. References

Provide names, addresses and telephone numbers for at least three clients for whom the prospective contractor has performed work similar to that proposed in this request. Include a summary statement for each assignment.

D. Subcontractors

If subcontractors are to be used, submit a description of each person or firm and work to be done by each subcontractor. Itemize the cost of the subcontract work in the cost proposal.

E. Methodology & Schedule

Describe the overall approach to the project and specific techniques that will be used. Responses to tasks outlined in the RFP must be numbered the same as in the RFP. Include a detailed schedule identifying major tasks to be undertaken and timeframe for each task.

F. Budget

Include a detailed budget, by task, for the work to be performed. Costs shall be shown to reflect fully-weighted hourly billing rates for all personnel. The methodology for calculating the fully-weighted rates must also be shown (e.g. labor, overhead rate, fringe, profit, etc.). Mark-up on direct costs by contractor or subcontractor is not allowed. Reimbursement for travel-related direct costs is limited to State rates which may be found on the Caltrans website: <http://www.dot.ca.gov/hq/asc/travel/ch12/1consultant.htm>). The breakdown of subcontract costs shall follow the same format as that for the prime contractor.

V. CONTRACTOR AWARD

A. Proposal Review

Each proposal will be reviewed to determine whether it meets the proposal requirements contained in Section IV. Failure to meet the requirements for the Request for Proposals will be cause for rejection of the proposal.

The Mendocino Council of Governments may reject any proposal if it is conditional, incomplete, or contains irregularities. The Mendocino Council of Governments may waive an immaterial deviation in a proposal. Waiver of an immaterial deviation shall in no way modify the Request for Proposals document or excuse the proposer from full compliance with the contract requirements if the proposer is awarded the contract.

B. Proposal Evaluation

An evaluation committee will evaluate those proposals that meet the proposal requirements, and will determine whether interviews will be needed. Evaluation will be based on qualifications of individuals or firm, successful experience and performance with similar projects, proposal contents and methodology, and cost proposal. Scoring will be as follows:

| | |
|---|---------------------|
| • Qualifications of Individual or Firm | (20 points maximum) |
| • Experience/Performance | (30 points maximum) |
| • Proposal Contents & Methodology | (30 points maximum) |
| • Cost Proposal, Including Budget/Resource Allocation | (20 points maximum) |
| <hr/> <hr/> | |
| Total Points Possible (100 points maximum) | |

In the event MCOG elects to conduct interviews, a separate score will be used to rank oral responses, as follows:

| | |
|--|---------------------|
| • Project Understanding | (50 points maximum) |
| • Project Approach | (50 points maximum) |
| <hr/> <hr/> | |
| Total Points Possible (100 points maximum) | |

C. Contract Award

A contract will be negotiated with the individual or firm determined in the proposal evaluation process to be best suited to perform this project. If a contract cannot be negotiated with the individual or firm submitting the highest rated proposal that is in the best interests of the Mendocino Council of Governments, staff will terminate negotiations with that firm and commence the negotiation process with the firm submitting the second highest rated proposal.

This contract will be awarded using a “Cost Reimbursement/Actual Cost Plus Fixed Fee” payment method. The contract will include all State and/or Federal requirements that "flow down" from the funding sources. (See attached **Exhibit 1** – MCOG Sample Contract).

VI. GENERAL INFORMATION

A. Proposal Submittal

Proposals must be received by no later than **3:00 p.m. on January 4, 2019**. Late proposals received after that time will not be accepted. Post marks will not suffice. Three (3) print copies of proposal, plus one electronic copy (emailed to lellard@dbcteam.net) shall be furnished.

Proposals may either be mailed or hand delivered to:

Loretta Ellard, Project Manager
Mendocino Council of Governments - Planning
367 North State Street, Suite 204
Ukiah, CA 95482

B. Schedule

The tentative schedule of activities related to the Request for Proposals is as follows. Extension of this timeline may be considered, subject to requirements of funding agency.

| Activity | Date |
|---|------------------------------------|
| RFP Mail-out | December 5, 2018 |
| Written Question Submittal Deadline | December 14, 2018 |
| Response to Questions Posted to MCOG's website https://mendocinocog.specialdistrict.org/ | December 19, 2018 |
| Proposal Submittal Deadline | January 4, 2019 - 3:00 p.m. |
| Review/Ranking of Proposals | January 7-10, 2019 |
| Contractor Selection & Contract Award | January 14-18, 2019 |
| Project Starting Date - Notice to Proceed | January 22, 2019 |
| Presentation of Final Plan to MCOG | June 3, 2019 |
| Final Plan Due | June 30, 2019 |

C. Amendments to Request for Proposals

The Mendocino Council of Governments reserves the right to amend the Request for Proposals by addendum prior to the final date of proposal submission. All addenda will be posted on MCOG's website at <https://mendocinocog.specialdistrict.org/>

D. Funding

Funding for this combined project is provided with State (Rural Planning Assistance) funds. A total of **\$45,000** is available for the consultant's portion of the project.

E. Non-commitment of the Mendocino Council of Governments

This Request for Proposals does not commit the Mendocino Council of Governments to award a contract, to pay any costs incurred in the preparation of a proposal to this request, or to procure or contract for services or supplies.

F. Public Domain

All products used or developed in the execution of any contract resulting from this request will remain in the public domain at the completion of the contract.

G. Questions

Questions regarding this Request for Proposals will only be accepted in writing (written correspondence or e-mail). Questions should include the individual's name, the name of the firm, address, telephone number, and e-mail address.

Questions must be submitted no later than **December 14, 2018** to:

Loretta Ellard, Project Manager
Mendocino Council of Governments – Planning
367 N. State Street, Suite 204
Ukiah, CA 95482
Email: lellard@dbcteam.net

Questions and answers will be provided in the form of an addendum to this RFP, and will be posted on MCOG’s website at <https://mendocinocog.specialdistrict.org/> by December 19, 2018.

H. Protest Procedures and Dispute Resolution Process

The Mendocino Council of Government’s “Protest Procedures and Dispute Resolution Process” shall be utilized to resolve any protests or disputes to this procurement process. (See attached **Exhibit 2** – Protest Procedures and Dispute Resolution Process.)



APPENDIX

- Exhibit 1 Sample Contract – Mendocino Council of Governments
- Exhibit 2 Protest Procedures & Dispute Resolution Process

MENDOCINO COUNCIL OF GOVERNMENTS

PROFESSIONAL SERVICES AGREEMENT

[Project Name]

This Professional Services Agreement (“Agreement”) is entered into on [Date], by and between the Mendocino Council of Governments, hereinafter referred to as "MCOG" and [Company Name], hereinafter referred to as “Consultant.”

RECITALS:

MCOG may retain independent contractors to perform special, technical, expert, or professional services. **Consultant** is equipped, staffed, licensed, and prepared to provide such services.

MCOG is lead agency for the [Project Name], hereinafter referred to as the "Project," funded by [grant name, funding source and amount/s] from the [State of California, Department of Transportation], hereinafter referred to as the "State." MCOG shall be responsible to **State** for the successful completion of this **Project**, as authorized by resolution of MCOG’s Board of Directors.

All services performed by MCOG, **Consultant** and any sub-consultants pursuant to this Agreement are intended to be performed in accordance with all applicable Federal, State, and County of Mendocino laws, ordinances, regulations, and Caltrans’ published manuals, including the approved grant application. In case of conflict between Federal, State and County of Mendocino laws, ordinances, or regulations, the order of precedence for applicability of these laws shall be Federal, State and County of Mendocino laws and regulations, respectively.

MCOG and **Consultant** agree as follows:

1. WORK TO BE PERFORMED

Consultant agrees to provide those services, tasks and products detailed in the attachments, incorporated herein by reference. Professional services described in Exhibits A and B may be refined or amended by written agreement of MCOG and **Consultant**. [confirm Exhibits to be attached and label exhibits appropriately]

- Exhibit A: MCOG’s Request for Proposals dated _____, with Attachments 1-6
- Exhibit B: Scope of Work, Schedule and Budget
- Exhibit C: Rates of [Consultant] and Sub-consultants
- Exhibit D: Caltrans Local Assistance Procedures Manual Exhibit 10-J
- Standard Contract Provisions for Sub-consultant/DBE Participation.

Consultant agrees to perform any additional services as may be required due to significant changes in general scope of the project or its design, including but not limited to change in

size, complexity, or character. Such additional services shall be paid for by Amendment to this Agreement or by a Supplemental Agreement and shall conform to the rates of payment specified in Section 2 hereof.

2. PAYMENT FOR SERVICES

Compensation for services provided shall not exceed \$[contract amount] This shall include compensation for completing the tasks and products identified in **Exhibits A and B**. Cost overruns and/or failure to perform within the limits of the proposed budget shall not relieve **Consultant** of responsibility to provide those tasks and products specified in the Exhibits.

MCOG shall pay **Consultant** for work satisfactorily completed in accordance with **Exhibits A and B** according to the process in Section 3 below. The method of payment shall be “Actual Cost Plus Fixed Fee,” also known as “Cost Reimbursement,” to include hourly rates plus non-salary expenses and fee (profit), in accordance with **Consultant's** Cost Proposal, as attached hereto and made a part hereof in **Exhibit B**.

3. INVOICES AND DISBURSEMENT

MCOG will pay **Consultant** no more often than monthly, based on itemized invoices for work completed, by task, including receipts and sufficient documentation of any direct expenses. Charges shall be shown to reflect hourly billing rates for all personnel labor. Monthly invoices shall be accompanied by a brief summary of progress to date, segregated by task. Sub-consultant invoices also shall include a narrative of work completed and documentation of any direct costs. **Consultant** mark-up of direct expenses or of subcontractor invoices are not allowable; therefore **MCOG** will not pay **Consultant** for any such increases to actual costs incurred.

MCOG shall review invoices and may approve them for payment or adjust them after contact with **Consultant**. Total progress payments for each task shall not exceed 100% of the budget for each major task as shown in **Exhibit B**. **MCOG** will make payments within 30 days of receipt of **Consultant's** invoices, or as promptly as its fiscal system allows.

MCOG shall hold ten percent (10%) retainage of each invoice from **Consultant** and shall make quarterly incremental acceptances of portions of the contract work, and release retainage payments to **Consultant** based on these acceptances. **Consultant** shall return all monies withheld in retention from a sub-consultant within 30 days after receiving payment from **MCOG** as defined in Attachment D, Standard Contract Provisions for Sub-consultant/DBE Participation, Section 4(D).

Contractor shall make progress payments to its subcontractors, if any, no later than 10 days following receipt of payments by **MCOG**, in accordance with Section 7108.5 of the California Business and Professional Code, unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with **MCOG's** prior written approval.

Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration. For more information, refer to: <http://www.dot.ca.gov/hq/asc/travel/ch12/1consultant.htm>

If **MCOG** substantially alters the scope of work, the maximum fee may be changed by Supplemental Agreement or an Amendment signed by both **MCOG** and **Consultant**.

4. REPORTS

Due dates and milestones are detailed in **Exhibit B**. Preparation of deliverable work products detailed in **Exhibit B** shall be in formats acceptable to **MCOG**. **MCOG** will provide **Consultant** with guidance on acceptable formats. **Consultant** shall bear the expense of all printing and reproduction costs of the deliverable products, until final reports and products are accepted by **MCOG**. **Consultant** shall provide deliverable products in both print and electronic formats as specified in **Exhibit B**.

5. SERVICES OF MCOG

MCOG shall provide full information as to its requirements for performance of this Agreement, attached as **Exhibit A**. **MCOG** shall provide program guidance and appropriate monitoring of work task performance under this Agreement. **MCOG** shall place at the disposal of **Consultant** all available information pertinent to the project. **MCOG** will examine all studies, reports, or other submittals from **Consultant** and will make every effort to provide comments pertaining thereto within ten (10) calendar days of receipt.

6. TERM OF AGREEMENT

The term of this Agreement shall be from [start date—spelled out] to [end date]. Execution of this Agreement by **MCOG** shall constitute **Consultant's** authority to proceed immediately with the performance of the work described by **Exhibit B**, provided that evidence of insurance has been received by **MCOG** as specified under Section 11 below.

All work by **Consultant** shall be completed and all deliverables submitted to and in the possession of **MCOG** by due dates listed in **Exhibit B**. Extensions of due dates shall be made only upon written authorization by **MCOG**. **Consultant** shall not be held responsible for delays caused by circumstances beyond its control.

Consultant acknowledges that timely performance of services is an important element of this Agreement and will perform services in a timely manner consistent with sound professional practices.

7. PROJECT INSPECTION AND ACCOUNTING RECORDS

Consultant agrees that duly authorized representatives of **MCOG and State** shall have right of access to the **Consultant's** files and records relating to the **Project** and may review the work at appropriate stages during performance of the work. **Consultant** must maintain

accounting records and other evidence pertaining to costs incurred, which records and documents shall be kept available at **Consultant's** offices during the contract period and thereafter for three (3) years from the date of final payment, or until annual audit resolution is achieved, whichever is later. (See also Section 13.)

8. OWNERSHIP OF FINAL REPORTS AND PRODUCTS:

All original reports and documents together with such backup data as required by this Agreement shall be and shall remain the property of **MCOG and State**.

Consultant is advised that Government Code Section 7550 states in part, “*Any documents or written reports prepared as a requirement of this contract shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of those documents or reports if the total cost for work by non-employees of the public agency exceeds \$5,000.*”

[Opt.: “**MCOG shall have unlimited future rights to use any models or computer programs which may be developed during the course of this study, and MCOG shall be exempt from any extra charge or license fee imposed by Consultant for such use, unless specifically identified in the proposal.**”]

9. TERMINATION

At any time **MCOG** may suspend indefinitely or abandon the project, or any part thereof, and may require **Consultant** to suspend the performance of its services. In the event **MCOG** abandons or suspends the project, **Consultant** shall receive compensation for services rendered to date of abandonment and suspension in accordance with the provisions of Sections 2 and 3 herein.

It is understood and agreed that should **MCOG** determine that any part of the work involved in the program is to be suspended indefinitely, abandoned, or canceled, this Agreement shall be amended accordingly. Such abandonment or cancellation of a portion of the program shall in no way void or invalidate this Agreement as it applies to any remaining portion of the project.

If, in the opinion of **MCOG**, **Consultant** fails to perform or provide prompt, efficient and thorough service, or if **Consultant** fails to complete the work within the time limits provided, **MCOG** shall have the right to give notice in writing to **Consultant** of its intention to terminate this Agreement. The notice shall be delivered to **Consultant** at least seven (7) days prior to the date of termination specified in the notice. Upon such termination **MCOG** shall have the right to take **Consultant's** studies, and reports insofar as they are complete and acceptable to **MCOG** and pay **Consultant** for its performance rendered, in accordance with Sections 2 and 3 herein, prior to delivery of the notice of intent to terminate, less the amount of damages, general or consequential, if any, sustained by **MCOG** due to the breach of this Agreement by **Consultant**. Said termination of the Agreement shall not relieve **Consultant** of its liability to **MCOG** for any damages, general or consequential, which **MCOG** may

sustain as a result of **Consultant's** failure to satisfactorily perform its obligations under this Agreement.

10. RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Consultant shall indemnify and hold harmless **MCOG** and its agents and officers against and from any and all claims, lawsuits, actions, liability, damages, losses, expenses, and costs (including but not limited to attorney's fees), brought for, or on account of, injuries to or death of any person or persons including employees of **Consultant**, or injuries to or destruction of property including the loss of use thereof, arising out of, or resulting from, the performance of the work described herein, provided that any such claim, lawsuit, action, liability, damage, loss, expense, or cost is caused in whole or in part by any negligent or intentional act or omission of the **Consultant**, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Where **Consultant** is found to have caused the injury, damage, or loss only in part, **Consultant** shall hold **MCOG** harmless only to the extent **Consultant** caused the injury, damage, or loss. **MCOG** agrees to timely notify **Consultant** of any such negligence claim and to cooperate with **Consultant** to allow **Consultant** to defend such a claim.

MCOG shall indemnify and hold harmless **Consultant**, its officers, agents, and employees from any and all claims, suits, losses, damages, costs (including reasonable attorney's fees) and demands, pure economic damages, administrative fees, penalties and fines imposed, and demands, including reasonable attorney's fees connected therewith, on account of personal injury, including death, or property damage, sustained by any person or entity not a party to this Agreement between **Consultant** and **MCOG** and arising out of the performance of such Agreement to the extent such injury, death or damage is caused by the negligence or willful misconduct of **MCOG** or its contractors or their respective employees, officers and agents.

11. INSURANCE

Consultant, at its expense, shall secure and maintain at all times during the entire period of performance of this Agreement, insurance as set forth herein with insurance companies acceptable to **MCOG** for **MCOG's** protection, its elected or appointed officials, employees and volunteers, **Consultant** and any other independent contractor from any and all claims which may arise from operations under this Agreement, whether operations be by **Consultant**, by another independent contractor, or by anyone directly or indirectly employed by either of them.

Consultant shall provide to **MCOG** Certificates of Insurance evidencing minimum coverage as specified below:

Vehicle/Bodily Injury - \$250,000 Each Person, \$500,000
Each Occurrence and Vehicle/Property Damage - \$250,000
Each Occurrence

OR

Combined Single Limit Vehicle Bodily Injury and Property
Damage Liability - \$1,000,000 Each Occurrence

AND

General Liability - \$1,000,000 per Occurrence for Bodily
Injury, Personal Injury and Property Damage

AND

Worker's Compensation and Employer's Liability: Limits
as required by the labor code of the State of California.

In the event of breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, **MCOG**, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend further work pursuant to this Agreement.

Consultant shall not commence work, nor shall it allow its employees or subcontractors or anyone to commence work contemplated through this Agreement until all insurance required hereunder has been submitted to and accepted by **MCOG**. Failure to submit proof of insurance as required herein may result in awarding said Agreement to another bidder.

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve **Consultant** for liability in excess of such coverage, nor shall it preclude **MCOG** from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law.

Before beginning the work, **Consultant** shall furnish to **MCOG** satisfactory proof that it has secured, for the period covered under this Agreement, Workers Compensation Insurance for all persons whom it may employ 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.

Consultant shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subcontractor's employees.

12. STANDARD OF CARE

The absence, omission, or failure to include in this Agreement items which are considered to be a part of normal procedures for work of this type or which involve professional judgment shall not be used as a basis for submission of inadequate work or incomplete performance.

MCOG relies upon the professional ability and stated experience of **Consultant** as a material inducement to entering into this Agreement. **Consultant** understands the use to which **MCOG** will put its work product and hereby warrants that all findings, recommendations, studies and reports shall be made and prepared in accordance with generally accepted professional practices.

Consultant will comply with all Federal, State and Local laws and ordinances as may be applicable to the performance of work under this Agreement.

13. STATE AND FEDERAL REQUIREMENTS

Non-Discrimination. a) In the performance of work under this Agreement, **MCOG, Consultant** and its sub-consultants 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.

b) **MCOG, Consultant** and its sub-consultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. **MCOG, Consultant** and its sub-consultants 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.

c) **MCOG, Consultant** and its sub-consultants 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.

d) **MCOG, Consultant** and its sub-consultants 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.

Disadvantaged Business Enterprise (DBE) Obligation. **MCOG, Consultant** and its sub-consultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Title VI of the Civil Rights Act of 1964. **Consultant** agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, California Civil Code section 51(b) and the regulations of the U.S. Department of Transportation issued thereunder

in 49 CFR Part 21.

Equal Employment Opportunity. In connection with the performance of this Agreement, **Consultant** 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.

Cost Principles. **MCOG, Consultant** and its sub-consultants 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 Title 2, CFR, part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable. For more information, refer to: <http://www.gpoaccess.gov/nara/index.html>.

Record Retention and Audits. **MCOG, Consultant** and its sub-consultants 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 California State Auditor, and auditors representing the federal government. Copies will be made and furnished by **MCOG** upon request, at no cost to State.

MCOG, Consultant and its sub-consultants 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.

14. COMPLIANCE

Consultant, in the conduct of the services contemplated within this agreement, shall comply with all statutes, State or Federal, and all ordinances, rules and regulations enacted or issued by the County of Mendocino.

15. INDEPENDENT CONSULTANT

Both **MCOG** and **Consultant** agree and acknowledge that the relationship between them is that of public entity and independent contractor and shall in no event be considered that of employer/employee. **MCOG** shall compensate **Consultant** by payment of the gross amounts

due to **Consultant**, and **Consultant** shall be solely responsible for any federal, state, and local taxes and withholdings that may be applicable.

16. FINANCIAL INTEREST

Consultant 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. **Consultant** further covenants that in the performance of this Agreement, no person having any such interest shall be employed or subcontracted.

17. SUCCESSOR AND ASSIGNMENTS

MCOG and **Consultant** each binds itself, its partners, successors, and executors, administrators, and assigns to the other party to this Agreement, and to the partners, successors, executors, administrators and assigns of such party in respect to all covenants of this Agreement.

Except as noted above, neither **MCOG** nor **Consultant** shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other, however, **Consultant** reserves the right to assign the proceeds due under this Agreement to any bank or person.

In the case of death of one or more members of the firm of **Consultant**, the surviving member or members shall complete the professional services covered by this Agreement.

18. NOTICES

Notices pursuant to this Agreement shall be served via **certified** United States mail, addressed to the parties as follows:

Phillip J. Dow, Executive Director
Mendocino Council of Governments
367 N. State St., Suite 206
Ukiah, CA 95482

[Consultant Name, Title]
[Consultant Company Name]
[Address]
[City, State, Zip]

19. VENUE

The venue for this agreement shall be Mendocino County, California.

20. EXTENT OF AGREEMENT:

This Agreement and all exhibits made a part hereof constitute the entire Agreement between the parties. In case of conflict or inconsistency between this Agreement and any exhibits, this Agreement shall control. This Agreement shall not be modified except by written agreement of both parties.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Agreement in duplicate as of the day and year first written above.

Phillip J. Dow, Executive Director
Mendocino Council of Governments

[Name, Title]
[Consultant Company Name]

Federal ID No.: _____

Mendocino Council of Governments

Protest Procedures & Dispute Resolution Process

- A. Purpose. The purpose of these procedures is to set forth the procedures to be utilized by the Mendocino Council of Governments (MCOG) in considering and determining all bid protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.
- B. General. In order for a bid protest to be considered by MCOG, it must be submitted by an interested party (as defined below in accordance with the procedures set forth herein). A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered by MCOG, and will be returned to the submitting party without any further action by MCOG.
- C. Definitions. For purposes of these Bid Protest Procedures:
1. The term "Bid" includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB), and a proposal submitted by an offeror in response to a Request for Proposals (RFP).
 2. The term "contract" means that document to be entered into between MCOG and the successful bidder and offeror.
 3. The term "days" refers to normal business days of MCOG staff offices.
 4. The term "interested party" means any person: (a) who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and (b) whose direct economic interest would be affected by the award of the contract or by failure to award a contract.
 5. The term "solicitation" means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of document used to procure equipment or services.
- D. Grounds for Protest. Any interested party may file a bid protest with MCOG on the grounds that:
1. MCOG has failed to comply with applicable Federal or State Law;
 2. MCOG has failed to comply with its procurement procedures;
 3. MCOG has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable;
 4. MCOG has issued restrictive or discriminatory specifications; or,
 5. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.

E. Contents of Protest

1. A bid protest must be filed in writing and must include:
 - a. The name and address of the protestor.
 - b. The name and number (if available) of the procurement solicitation.
 - c. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of MCOG procurement procedures, or specific term of the solicitation alleged to have been violated.
 - d. Any relevant supporting documentation the protesting party desires MCOG to consider in making its decision.
 - e. The desired relief, action, or ruling sought by the protestor.

2. Protests must be filed with:

Executive Director
Mendocino Council of Governments
367 N. State Street, Suite 206
Ukiah, CA 95482

3. All protests must be received at the MCOG address listed above during normal office hours of 8:00 a.m. to 5:00 p.m., Pacific Standard Time.
4. If any of the information required by this section is omitted or incomplete, MCOG will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

F. Timing Requirements and Categories of Protests. MCOG will consider the following categories of bid protests within the time period set forth in each category:

1. Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five days prior to the scheduled bid opening or deadline for submittal or proposals, as appropriate, in order to be considered by MCOG. Any protest based on such grounds not filed within this period will not be considered by MCOG. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
2. Any bid protests regarding the evaluation of bids or proposals by MCOG, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with MCOG no later than 72 hours after the protestor's receipt of MCOG's written notice of its decision or intended decision to award a contract. Any protest filed after such date which raises issues regarding the bid proposal evaluation, or the contract approval or award will not be considered by MCOG.

G. Review of Protest by MCOG

1. MCOG will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.
2. In the notification, MCOG will inform the protestor of any additional information required for evaluation of the protest by MCOG, and set a time deadline for submittal of such information. If MCOG requests additional information, and it is not submitted by the stated deadline, MCOG may either review the protest on the information before it, or decline to take further action on the protest
3. In its sole discretion, MCOG may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to MCOG relative to the merits of the bid protest. MCOG will set a time deadline for the submittal of such comments, which will be no less than 5 days after MCOG provides notification of the protest.
4. In its sole discretion, MCOG may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by MCOG in deciding the bid protest if it is submitted to MCOG in writing within 3 days after the conference.

H. Effects of Protest on Procurement Actions

1. Upon receipt of a timely protest regarding either the solicitation process of the solicitation documents in the case of sealed bids, MCOG will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless MCOG determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
2. Upon receipt of a timely protest regarding evaluation of bid or proposals, or the approval or award of a contract, MCOG will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.
3. Notwithstanding the pendency of a bid protest, MCOG reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
 - a. Where the item to be procured is urgently required;
 - b. Where MCOG determines, in writing, that the protest is vexatious or frivolous;
 - c. Where delivery or performance will be unduly delayed, or other undue harm to MCOG will occur, by failure to make the award promptly; or,
 - d. Where MCOG determines that proceeding with the procurement is otherwise in the public interest.

- I. Summary Dismissal of Protests. MCOG reserves the right to summarily dismiss all or any portion for a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by MCOG in a previous bid protest by any interested party in the same solicitation or procurement action.

- J. Protest Decisions
 - 1. After review of a bid protest, the Procurement Officer shall make a recommendation to the Executive Director of the appropriate disposition of such protest.
 - 2. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and MCOG's own investigation and analysis.
 - 3. If the protest is upheld, MCOG will take appropriate action to correct the procurement process and protect the rights of the protestor, including re-solicitation, revised evaluation of bids or proposals or MCOG's determination, or termination of the contract.
 - 4. If the protest is denied, MCOG will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.

- K. Judicial Appeals. A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California located in Mendocino County.