

REQUEST FOR PROPOSALS

for

RIGHT-OF-WAY APPRAISAL & ACQUISITION SERVICES

for the

COVELO SR 162 CORRIDOR MULTI-PURPOSE TRAIL

in

MENDOCINO COUNTY

FOR:

MENDOCINO COUNCIL OF GOVERNMENTS

Nephele Barrett, Executive Director
Mendocino Council of Governments
367 North State St., Suite 206
Ukiah, CA 95482

November 7, 2018

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Exhibit 1 Sample Contract – Mendocino Council of Governments

Exhibit 2 Protest Procedures & Dispute Resolution Process

I. BACKGROUND

A. The Region

The SR 162 corridor is the primary north-south route between the town of Covelo and the Round Valley Indian Reservation's administrative services, including a health center and Tribal offices. The State highway acts as the central collector through the community, intersecting County roads, and creating a series of local access routes to schools, housing centers and other services. Route 162 is a 22 – 26' wide, two-lane, conventional highway with narrow or non-existent shoulders. Route 162 is classified as a major collector according to the California State Highway Log (2002). The current route concept for SR 162 is conventional two-lane highway. Within the project area, little or none of the route segment meets the standard roadway width (two, twelve-foot travel lanes with four-foot shoulders or 32-feet of total paved width) for a conventional two-lane highway.

Non-motorized travel is an important form of transportation in Round Valley. Covelo and the Round Valley Indian Reservation are not served by public transportation. A large number of children, elderly and low-income residents use non-motorized travel modes. The Tribal Health Center is known to attract pedestrian mothers with their infants in strollers for regular visits. The need for safe pedestrian corridors was identified by local residents as a high priority in the Covelo/Round Valley Non-Motorized Needs Assessment and Engineered Feasibility Study (2014) and in Making Safe & Healthy Community Connections in Round Valley – Walk/Bike Path and Community Revitalization Strategy (2010).

B. Population

The 2010 Census population figures place Mendocino County's population at 87,841. This figure includes an unincorporated population of 59,156 and an incorporated population of 28,685 (Fort Bragg, Point Arena, Ukiah and Willits). The Round Valley Indian Reservation, the unincorporated community of Covelo and its surrounding area, which encompasses approximately 44 square miles, has a population of roughly 4,000 people. The Round Valley Indian Reservation is the second largest Reservation in California, in terms of population, with approximately 2,800 members living in the area. Mendocino County's poverty rate is above the Statewide average. Native American and low-income communities are frequently located in isolated rural areas like Round Valley in Mendocino County and are frequently disadvantaged in terms of employment opportunities, access to transportation, goods, services and public health.

C. Organization and Management

Mendocino Council of Governments (MCOG) is a Joint Powers Agency comprised of the County of Mendocino, and the cities of Fort Bragg, Point Arena, Ukiah, and Willits and is the designated Regional Transportation Planning Agency (RTPA). The MCOG Board of Directors is comprised of two members of the County Board of Supervisors, one representative from each of the four cities, and one countywide representative appointed by the Board of Supervisors. With the addition of a representative of the Caltrans District 1 Director, the MCOG Board becomes the Policy Advisory Committee.

II. PROJECT DESCRIPTION

INTRODUCTION

The Mendocino Council of Governments (MCOG) in partnership with the California Department of Transportation (Caltrans) and the Round Valley Indian Tribes has received grant funding for the design and construction of Phase I and Phase II of the Covelo SR 162 Corridor Multi-Purpose Trail.

PROJECT LOCATION & PURPOSE

Location

This project is located within the community of Covelo, along the SR 162 Corridor. Phase I will run parallel to SR 162 from Howard Street to Biggar Lane (1.05 miles) with an east-west component connecting to Henderson Lane (0.5 miles). Phase II will run parallel to SR 162 from Biggar Lane to Hurt Road (0.5 miles).

Purpose

The purpose of this project is to reduce the potential for conflicts between bicyclists, pedestrians, and vehicles within the SR 162 Corridor and increase mobility options in the community. SR 162 serves as “Main Street” within the community of Covelo. The highway has no developed facilities for bicycles or pedestrians and the drainage ditches on both sides of the highway force non-motorized users to travel in the vehicle lanes. The project will link critical activity centers within the community, including schools, the downtown center, tribal facilities, and residential areas.

III. SCOPE OF WORK

General Scope

The general scope of work is to provide Right of Way Appraisal and Acquisition Services for Phase I and Phase II of the Covelo SR 162 Corridor Multi-Purpose Trail. Such services will include real property appraisal, appraisal review, and acquisition. All work shall be performed under the guidance of the Local Assistance Procedures Manual and the Local Assistance Program Guidelines and shall comply with all Federal regulations. It is also understood that all work performed under this contract is considered to be performed by CONSULTANT.

The properties associated with this project are identified by their Assessor’s Parcel Number below:

<u>Phase 1</u>	<u>Phase 2</u>
033-230-22	033-470-10
033-230-23	032-470-20
033-013-12	032-470-36
033-013-02	032-470-35
032-480-15	032-470-07
032-480-51	

The Assessor Parcel Numbers listed above in **BOLD** are either owned by the Round Valley Indian Tribes or held in Trust by the U.S. Government for the Round Valley Indian Tribes.

CONSULTANT shall provide the following services:

Task 1: Real Property Appraiser

Responsible for preparation of Summary Appraisal Reports to determine the fair market value of the rights to be acquired from each subject property and prepared in accordance to professional standards, Uniform Standards of Professional Appraisal Practice (USPAP), and the Caltrans Right-of-Way Manual and all applicable laws and regulations. Each subject property appraisal will be separately bound and prepared in a “stand-alone” format suitable for furnishing to the associated property owners per Caltrans requirements. The comparable sales analysis shall be in chart format with accompanying analysis in narrative form. Comparable data shall be verified with parties to the transaction.

Appraisers shall be available for support for any MCOG eminent domain litigation and condemnation procedures, including, but not limited to, preparation of appraisal summary statements and related supporting declarations; providing updated statements of valuation; assistance of counsel by providing expert witness analysis and review of defendant’s property valuation information; preparation for, attendance, and testimony at deposition mediation, and trial proceedings as required.

Real Property Appraiser Responsibilities under the Uniform Act:

- Property owner must be notified in writing of Agency’s decision to appraise
- Property owner or designee must be given opportunity to accompany appraiser during property inspection
- Responsibility of sending Title VI information to property owners

- Diary entry of notifications and contacts
- Appraisal to contain minimum recognized standards for public acquisition (Zoning, Property Rights to be acquired, Highest and Best Use Analysis, Verified Comparables, Improvements acquired, Damages, Cost-to-Cure, etc.)
- All appraisals must contain Appraiser and Review Appraiser Certificates

Real Property Appraiser Minimum Qualifications:

Consultants for Real Property Appraiser Services must meet the following minimum qualifications, according to the Caltrans Right-of-Way Manual, and must possess:

- Appropriate Appraisal license as issued by the California Office of Real Estate Appraisers in accordance to the degree, complexity, and value of the appraisal required:
 - Resident License for any noncomplex 1-4 family property with value of \$1 million and Nonresidential property with a transaction value up to \$250,000
 - Certified Residential for any 1-4 family properties without regard to transaction value or complexity; and Nonresidential property with a transaction value up to \$250,000
 - Certified General for all real estate without regard to transaction value or complexity
- Minimum of two (2) years experience in appraisal of rights for eminent domain purposes
- Minimum of two (2) years experience in appraisal of tribal lands and interaction with the Bureau of Indian Affairs
- Successful completion of a course in appraisal of partial acquisitions for public agencies
- Successful completion of a course in the Uniform Relocation and Real Property Acquisition Policies Act taught by a recognized organization
- Successful completion of a course in State Eminent Domain Law taught by a recognized organization
- Specific knowledge and experience appropriate for the type of assignment

Deliverables:

- Copies of all Right of Way Appraisals
- Copies of all Notice of Decision to Appraise
- Copies of related communications with property owners including Right of Way diary entries of notifications and contacts, written correspondence, and emails

Task 2: Review Appraiser

Responsible for the preparation of independent and objective written reviews of the real property appraiser consultant's reports. Reviews will be completed in the form of a Review Appraiser Certificate (exhibit 7-EX-24D of the Caltrans Right-of-Way Manual) for each subject property appraisal in order to ensure appraisal quality and procedure. All reviews will adhere to professional standards, USPAP, and the Caltrans Right-of-Way Manual and all applicable laws and regulations. The review appraiser will recommend approval of the reported values to MCOG to govern negotiation and settlement. The review appraiser must not be the same individual as the initial appraisal consultant.

Review Appraiser Responsibilities under the Uniform Act:

- Confirmation of Analysis of Highest and Best Use, Damages, and Cost to Cure Damages
- Confirmation of Valuation

- Confirmation of Calculations and Report Integrity
- Prepare signed statement certifying value of appraisal reviewed, including an explanation of the basis for recommendation

Review Appraiser Services Minimum qualifications:

Consultants must meet the following minimum qualifications, according to the Caltrans Right-of-Way Manual and must possess:

- Certified Residential License for any 1-4 family property without regard to transaction value or complexity; and Nonresidential property with a transaction value up to \$250,000 or
- Certified General License for all real estate without regard to transaction value or complexity
- Minimum two (2) years experience in reviewing appraisals for eminent domain purposes
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Act and State Eminent Domain Law taught by a recognized organization
- Specific knowledge and experience appropriate for the type of assignment

Deliverables:

- Copies of all Review appraisal reports

Task 3: Acquisition Specialist

Responsible for “good faith negotiations” with property owners for the purchase of right-of-way based on values established in the reviewed and approved appraisals; adherence to all professional standards and the Caltrans Right-of-Way Manual and all applicable laws and regulations; preparation of all written correspondence, applicable forms, and MCOG’s standard purchase agreement; coordination with MCOG staff; performance of notary services related to the signing of acquisition documents; escrow coordination with MCOG’s selected title company; assisting MCOG staff with Right-of-Way Certification, completion of final close-out work per Caltrans and Bureau of Indian Affairs requirements; and maintenance of all acquisition files including acquisition diaries.

Acquisition Specialist Responsibilities under the Uniform Act:

- Ensure establishment of just compensation by local agency prior to initiation of negotiations.
- Expeditious acquisition within 30 days of approved appraisal
- First Written Offer should be presented in person when possible.
- Caltrans requires that a copy of the appraisal report shall be provided to the owner with the First Written Offer; a Summary Statement (basis for the appraisal) is optional in this case.
- Owner to be given reasonable time to consider the offer and present material relevant to value determination.
- Payment is required before taking possession unless date of possession clause is used in contract.
- Local agency is responsible for payment of all incidental expenses (title, escrow, surveys, prepayment penalties, etc.)
- Preparation of Administrative Settlements when it is reasonable and in the public interest.
- Diary entries including confirmation of delivering Title VI information.

Acquisition Specialist Services minimum qualifications:

Consultants must meet the following minimum qualifications, according to the Caltrans Right-of-Way Manual and must possess:

- Real Estate Broker's or Salesperson's License (when under the direct supervision of a Real Estate Broker) as issued by the California Department of Real Estate (as required by law). All Right of Way Contracts must be approved for content and signed or initialed by the Real Estate Broker.
- Minimum two (2) year experience in the acquisition of rights for eminent domain purposes.
- Minimum two (2) year experience in the acquisition of rights for tribal lands and interaction with the Bureau of Indian Affairs.
- Successful completion of courses in the Uniform Relocation and Real Property Acquisition Policies Act and State Eminent Domain Law taught by recognized organizations. By signing the Right of Way Contract, the Broker or Principal of the Company acknowledges responsibility for maintaining a complete file on each parcel.

Deliverables:

- Copies of all Right of Way Acquisition documents
- Copies of all communications with property owners including the First Written Offer and following correspondence to settlement
- Copies of Right of Way diary entries of notifications and contacts

IV. PROPOSAL REQUIREMENTS

Each technical proposal shall contain as a minimum, the following elements:

A. Identification of Prospective Consultant

The proposal shall include the name of the firm submitting the proposal, its mailing address, telephone number, e-mail address, and the name of an individual to contract if further information is desired.

B. Management

The prospective consultant shall designate by name the project manager to be assigned to this project. The selected consultant shall not cause the substitution of the project manager without prior written approval of the Mendocino Council of Governments.

C. Personnel

The prospective consultant shall describe the qualifications of all professional personnel to be employed, including a summary of similar work or studies performed, a resumé for each professional, a statement indicating how many hours (estimated) each professional will be assigned to the contract and what tasks each professional will perform. The consultant shall not cause members of the project team to be substituted without prior written approval of the Mendocino Council of Governments.

D. References

The prospective consultant shall provide names, addresses and telephone numbers for at least three clients for whom the prospective consultant has performed work similar to that proposed in this request. A summary statement for each assignment shall be provided.

E. Sub-consultants

If sub-consultants are to be used, the prospective consultant must submit a description of each person or firm and the work to be done by each sub-consultant. The cost of the subcontract work is to be itemized in the cost proposal. Consultant mark-up on sub-consultant costs is not allowed under this grant program.

F. Methodology

The prospective consultant shall describe the overall approach to the project, specific techniques that will be used, and specific administrative and operations management expertise that will be employed.

NOTE: Proposers' responses to the required tasks outlined in the RFP must be specifically numbered the same as in the RFP. If the responsible party for a certain task is not the Consultant, then that should be noted to maintain the required numbering. If additional tasks are proposed, they should be numbered as sub-tasks under the appropriate existing task. *(The reason for this task numbering requirement is that staff has found, when invoicing Caltrans grant projects, problems are minimized when the invoiced tasks match the task numbers in the approved grant.)*

G. Schedule of Tasks

The proposal shall contain a detailed schedule identifying major tasks to be undertaken to conduct the work and timeframe for each task. The schedule shall also identify all meetings, progress reports, deliverables, and the estimated staffing and hours to accomplish each task and deliverable.

H. Budget

In a separate, sealed envelope, the proposed consultant shall submit their proposed fee schedule. The fee schedule shall be broken down by task and by Phase, as defined at the beginning of Section III, for the work to be performed. It shall itemize all items that will be charged to the project. Costs shall be shown to reflect fully-weighted hourly billing rates for all personnel, however, the methodology for calculating the fully-weighted rates must be shown (e.g. labor, overhead rate, fringe, etc.). Consultant mark-up on direct costs is not allowed under this grant program. Reimbursement for travel-related direct costs (hotels, meals, etc.) is limited to approved State rates which may be found on the Caltrans website: (<http://www.dot.ca.gov/hq/asc/travel/ch12/1consultant.htm>).

The fee schedule will not be used during the consultant selection process, but may be used by the Mendocino Council of Governments during the negotiation process.

When invoicing, receipts are required to be submitted for all direct costs, other than fully-weighted personnel costs. If sub-consultants are to be used, the breakdown of subcontract costs shall follow the same format as that for the prime consultant.

I. Signature

The proposal shall be transmitted with a cover letter that must be signed by an official authorized to bind the proposer contractually and shall contain a statement to the effect that the proposal is a firm offer for a 90-day period. The letter accompanying the technical proposal shall also provide the following: name, title, address, telephone number, and e-mail address of individuals with the authority to negotiate a contract and bind the Consultant to the terms of the contract.

V. CONSULTANT AWARD

A. Proposal Review

Each proposal will be reviewed to determine if 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. MCOG reserves the right to select a Consultant based solely on written proposals. Evaluation will be based on proposer's understanding of work scope requirements demonstrated by responsiveness and comprehensiveness of the RFP response, qualifications of individuals or firm, successful experience and performance with similar projects, and proposal contents and methodology.

Scoring will be as follows:

• Responsiveness & Comprehensiveness of Proposal	(10 points maximum)
• Qualifications of Individual or Firm	(30 points maximum)
• Experience/Performance	(30 points maximum)
• Proposal Contents & Methodology	(30 points maximum)
<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 which is in the best interests of the Mendocino Council of Governments, then staff will terminate negotiations with that firm and commence the negotiation process with the firm submitting the second highest rated proposal. The contract will include all State requirements that "flow down" from the Caltrans grant. A contract shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 18, and 48 CFR Part 31.

VI. GENERAL INFORMATION

A. Proposal Submittal

Proposals must be received by no later than **5:00 p.m. on Friday, December 14, 2018**. Five (5) copies and one (1) electronic copy of the proposal shall be furnished. Proposals may be either mailed or hand delivered to:

Nephele Barrett, Executive Director
Mendocino Council of Governments
367 North State Street, Suite 206
Ukiah, CA 95482

B. Late Submittals

A proposal is late if received at any time after **5:00 p.m. on Friday, December 14, 2018**. Postmarks will not suffice. Proposals received after the specified time will not be considered and will be returned to the proposer.

C. Modification or Withdrawal of Proposals

Any proposal received prior to the date and time specified above for receipt of proposal may be withdrawn or modified by written request of the proposer. To be considered, however, any modified proposal must be received by the date and time specified above.

D. Consultant Selection Schedule

The tentative schedule of activities related to the Request for Proposals is as follows:

Activity	Date
RFP Mail-out	November 7, 2018
Written Question Submittal Deadline	November 23, 2018
Question/Answer Addendum posted to website	November 30, 2018
Proposal Submittal Deadline	December 14, 2018 - 5:00 p.m.
Review/Ranking of Proposals	December 17-21, 2018
Interviews (if needed)	January 7-11, 2019
Contractor Selection & Contract Award (tentative)	January 25, 2019
Project Starting Date - Notice to Proceed (tentative)	February 4, 2019

E. Property Rights

Proposals received within the prescribed deadline become the property of the Mendocino Council of Governments and all rights to the contents therein become those of the Council.

F. 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 <https://mendocinocog.specialdistrict.org/>.

G. Funding

Funding for this project is provided through the Active Transportation Program (State-only funds).

H. 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. The Mendocino Council of Governments reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified individual or firm, or to modify or cancel in part or in its entirety the Request for Proposals if it is in the best interest of the Council to do so.

I. Questions

Questions regarding this Request for Proposals will only be accepted in writing (Correspondence, E-mail or FAX is acceptable). Written 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 **5:00 p.m. on November 23, 2018**, to:

James Sookne, Project Manager
Mendocino Council of Governments
367 North State Street, Suite 204
Ukiah, CA 95482
FAX (707) 671-7767
Email: jsookne@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 <https://mendocinocog.specialdistrict.org/> by November 30, 2018.

J. Affirmative Action

Prospective consultants should be aware that the Equal Employment Opportunity Requirement of Executive Order 11246, as amended by Executive Order 11275, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practices Act and other federal and state laws pertaining to equal employment opportunity are applicable to any contract awarded by the Council of Governments.

K. 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.**)

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:

Nephele Barrett, 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.

Nephele Barrett, Executive Director
Mendocino Council of Governments

[Name, Title]
[Consultant Company Name]

Federal ID No.: _____

Mendocino Council of Governments

Protest Procedures & Dispute Resolution Process

I. Protest Procedures

I1. 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.

I2. 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.

I3. 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.

I4. 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.

15. 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.

16. 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.

17. 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.

18. 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.

I9. 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.

I10. 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.

I11. 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 the county of Mendocino.

October 1, 2014