

**COUNTY OF MENDOCINO
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of JUN 21 2016, 2016, is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and Mendocino County Tourism Commission (MCTC), hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONTRACTOR for its services, and programs of the Business Improvement District to promote tourism; and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONTRACTOR to provide the services described in Exhibit "A", and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

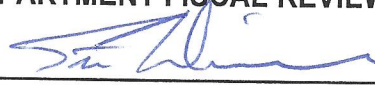
- Exhibit A Definition of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements

The term of this Agreement shall be from July 1, 2016 through June 30, 2017.

The compensation payable to CONTRACTOR hereunder shall be the revenues from Assessments made pursuant to the Ordinance and COUNTY fifty percent match of assessments collected for the term of this Agreement.

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

DEPARTMENT FISCAL REVIEW:

 6/6/16
DEPARTMENT HEAD DATE

Budgeted: Yes No

Budget Unit: 2110-760779 & PM 862189

Line Item: 760779 & 862189

Grant: Yes No

Grant No.: _____

CONTRACTOR/COMPANY NAME

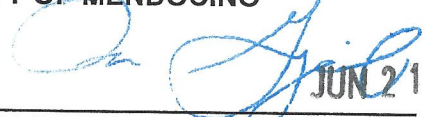
For original signature,
please see attached.

Mendocino County Tourism Commission

345 N Franklin Street

Fort Bragg, CA 95437

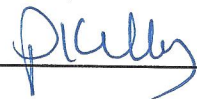
COUNTY OF MENDOCINO

By:  JUN 21 2016
DAN GJERDE, Chair
BOARD OF SUPERVISORS

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: 
Deputy

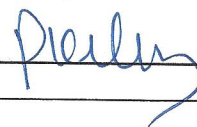
COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.


CARMEL J. ANGELO, Clerk of said Board

By: 
Deputy


By: 
Deputy

INSURANCE REVIEW:

RISK MANAGER

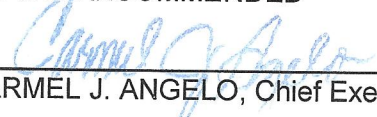
By: 
ALAN D. FLORA, Risk Manager

FISCAL REVIEW:

By: 
Deputy CEO/Fiscal

EXECUTIVE OFFICE REVIEW:

APPROVAL RECOMMENDED

By: 
CARMEL J. ANGELO, Chief Executive Officer

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

DEPARTMENT FISCAL REVIEW:

DEPARTMENT HEAD _____ DATE _____

Budgeted: Yes No

Budget Unit: 2110-760779 & PM 862189

Line Item: 760779 & 862189

Grant: Yes No

Grant No.: _____

COUNTY OF MENDOCINO

By: _____
DAN GJERDE, Chair
BOARD OF SUPERVISORS

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

**INSURANCE REVIEW:
RISK MANAGER**

By: _____
ALAN D. FLORA, Risk Manager

CONTRACTOR/COMPANY NAME

By: _____
John Kulis
Board Chair

NAME AND ADDRESS OF CONTRACTOR:

Mendocino County Tourism Commission

345 N Franklin Street

Fort Bragg, CA 95437

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: _____
Deputy

FISCAL REVIEW:

By: _____
Deputy CEO/Fiscal

EXECUTIVE OFFICE REVIEW:

APPROVAL RECOMMENDED

By: _____
CARMEL J. ANGELO, Chief Executive Officer

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors
Exception to Bid Process Required/Completed _____

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and County laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** CONTRACTOR shall indemnify, defend, and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever including damages to property and injuries to, or death of persons, reasonable attorney's fees, expert fees and court costs occurring or resulting, or alleged to be occurring or resulting, to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connections with the CONTRACTOR'S performance or its obligations under this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting, or alleged to be occurring or resulting, to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR'S performance of its obligations under this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR'S performance" includes CONTRACTOR'S action or inaction and the action or inaction of CONTRACTOR'S officers, employees, agents and subcontractors.
3. **INSURANCE AND BOND:** CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
5. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify Mendocino County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address

of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.

- c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto as funding permits.
7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
8. OWNERSHIP OF DOCUMENTS: CONTRACTOR hereby agrees to provide to a private, not-for-profit, successor and if there is none then assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's subcontractors or third parties at the request of the CONTRACTOR (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONTRACTOR's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

CONTRACTOR shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the CONTRACTOR and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the COUNTY harmless from any claims for infringement of patent or copyright arising out of such selection.

The COUNTY's rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

9. CONFLICT OF INTEREST: The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
10. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF MENDOCINO
Planning and Building Services
860 N Bush Street
Ukiah, CA 95482
Attn: Director

To CONTRACTOR: Mendocino County Tourism Commission
345 N Franklin Street
Fort Bragg, CA 95437
ATTN: Executive Director

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. USE OF COUNTY PROPERTY: CONTRACTOR shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: CONTRACTOR certifies that it will comply with all federal and state laws pertaining to equal employment opportunity and that it shall not engage in any unlawful discrimination.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Veteran's status, political affiliation, or any other non-merit factor.
 - b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONTRACTOR shall include the provisions set forth in this paragraph in each of its subcontracts.
13. DRUG-FREE WORKPLACE: CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads *nolo*

contendere to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.

14. ENERGY CONSERVATION: CONTRACTOR agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
15. COMPLIANCE WITH LICENSING REQUIREMENTS: CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous, as well as file copies of same with the County Executive Office.
16. AUDITS; ACCESS TO RECORDS: The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Mendocino, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within County or CONTRACTOR shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONTRACTOR's books and records, including, but not limited to, travel, lodging and subsistence costs. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

17. DOCUMENTS AND MATERIALS: CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for four

(4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONTRACTOR under this Agreement.

18. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
19. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR prior written notice. In the event that the COUNTY should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its services, activities and programs of the Business Improvement District to promote tourism shall not exceed revenues from the Assessment, made available pursuant to the Ordinance, less allowable fees and costs, and 50% of the Assessment (County match) for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.
20. **NON APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONTRACTOR prior to CONTRACTOR'S receipt of the termination notice.
21. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
22. **VENUE:** All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
23. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a

- waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
24. **ADVERTISING OR PUBLICITY:** CONTRACTOR shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.
 25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties.
 26. **HEADINGS:** Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
 27. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
 28. **ASSURANCE OF PERFORMANCE:** If at any time the COUNTY has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
 29. **SUBCONTRACTING/ASSIGNMENT:** CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.

- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. CONTRACTOR shall use subcontractors identified in Exhibit "A" and shall not substitute subcontractors without COUNTY's prior written approval.
 - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
30. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years.
31. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
32. PATENT AND COPYRIGHT INDEMNITY: CONTRACTOR represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("CONTRACTOR Products") provided to COUNTY under this Agreement infringe any patent, copyright or other proprietary right. CONTRACTOR shall defend, indemnify and hold harmless COUNTY of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any CONTRACTOR Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party.
- a. COUNTY will: (1) notify CONTRACTOR promptly of such claim, suit or assertion; (2) permit CONTRACTOR to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable CONTRACTOR to do so. CONTRACTOR shall not agree without COUNTY's prior written consent, to any settlement, which would require COUNTY to pay money or perform some affirmative act in order to continue using the CONTRACTOR Products.
 - b. If CONTRACTOR is obligated to defend COUNTY pursuant to this Section 32 and fails to do so after reasonable notice from COUNTY, COUNTY may defend itself and/or settle such proceeding, and CONTRACTOR shall pay to COUNTY any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with COUNTY's defense

and/or settlement of such proceeding.

- c. In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.
- d. Notwithstanding this Section 32, COUNTY retains the right and ability to defend itself, at its own expense, against any claims that CONTRACTOR Products infringe any patent, copyright, or other intellectual property right.

33. OTHER AGENCIES:

Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The CONTRACTOR is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the CONTRACTOR elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

CONTRACTOR shall provide the following services:

1. CONTRACTOR shall cooperate with County and County staff in the performance of all work hereunder.
2. CONTRACTOR shall cooperate with the Mendocino County Lodging Association, Mendocino County Promotional Alliance, Chambers of Commerce, the Arts Council of Mendocino County, Mendocino Winegrowers, Inc., restaurants and other promotional organizations within the County to provide the services, activities and programs to promote tourism and the marketing of the County and related products, including scenic, recreational, cultural, viticulture and other attractions.
3. CONTRACTOR shall continue partnership with the Arts Council of Mendocino County by allocating \$14,400 for specific deliverables.
4. CONTRACTOR shall be accredited by Destination Marketing Association International (DMAI).
5. CONTRACTOR shall be solely responsible for the timely maintenance of any and all "Welcome to Mendocino County" "Gateway Signs" which are currently erected or are to be erected along major highways in the COUNTY. Maintenance shall include, but not be limited to, repair, graffiti removal, clearing brush which impedes visibility, and removal or restoration as appropriate.
6. CONTRACTOR shall investigate and consider the placement of gateway signage for the following communities: Potter Valley (at or near Hwy. 20 and Potter Valley Road); and Round Valley (at the intersection of Hwy. 101 and Hwy. 162).
7. CONTRACTOR shall certify that the bylaws of its governing body include the required conditions per Chapter 5.140.250 (F), Mendocino County Lodging Business Improvement District, Contract, of the Mendocino County Code.
8. CONTRACTOR shall annually have completed a full financial audit by a qualified outside audit agency and a copy of the completed audit report shall be forwarded to the County Auditor-Controller within 6 months of the close of the annual audit period.
9. CONTRACTOR will provide and fund projects, programs and activities that benefit lodging establishments within the District. This includes the promotion of Mendocino County as an overnight tourism destination, the branding of Mendocino County as a destination, the provision for direct visitor services, and securing the assistance of various partnerships in these endeavors. Assessment funds shall be used exclusively for the foregoing purpose.

10. CONTRACTOR shall assist the Advisory Board in the performance of its responsibilities under the Parking and Business Improvement District Law of 1989 (Sections 36500 through 36551, as amended of the California Streets and Highways Code, hereinafter the "Law") including but not limited to,
 - a. Preparation of an annual work plan by thirty (30) days following CONTRACTOR's annual meeting in September, to be submitted and approved by the County Chief Executive Officer or his/her designee who shall then convene the Advisory Board pursuant to the Ordinance.
 - b. Assisting the County and paying for the costs of convening of meetings of the Advisory Board, including attendance at Advisory Board meetings and preparing any reports and gathering information that the County determines necessary and appropriate to support the Advisory Board in the performance of its responsibilities under the Law.
 - c. Preparation of recommendations as instructed by the Chief Executive Officer or his/her designee to assist the Advisory Board in making recommendations to the Board of Supervisors regarding the expenditure of Assessment funds, the classifications of businesses, and the method and basis of levying the assessment, in accordance with Section 36530 of the Law.
 - d. Preparation of the Annual Report required by Section 36533 of the Law, which shall include any recommended changes to boundaries, the improvements and activities to be provided for that fiscal year, an estimate of cost for providing the improvements and activities, the method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his/her business for that fiscal year, the amount of any surplus or deficit revenues to be carried over from a previous fiscal year, and the amount of any contributions to be made from sources other than assessments.
 - e. In addition to meeting statutory requirements, the Annual Report shall include any information regarding the board activities of Contractor that were deemed by its members to be positive or negative outcomes of actions taken by those boards in the preceding year.
 - f. Hosting and organizing at least one annual meeting between the BID Advisory Board and Contractor who shall also invite the Mendocino County Promotional Alliance and Mendocino County Lodging Association.
 - g. Within one hundred and twenty (120) days preceding the fiscal year for which assessments are to be levied, Contractor shall submit to the County Executive Office, for action by the Mendocino County Board of

Supervisors, the information required by Sections 36533-36542 of the Law pertaining to the continuance of the District and the levy of Assessments for the following fiscal year. Contractor shall have full responsibility for preparing the information and cost estimates required for continuation of the District and the levying and collection of the Assessments, including non-County legal assistance.

11. In accordance with Paragraph 29 CONTRACTOR may retain subcontractors to deliver the services herein; however CONTRACTOR shall remain fully responsible for compliance by its contractors with all the terms of this Agreement, regardless of the terms of any agreement between the Contractor and its subcontractor.
12. The governing board of the Contractor is subject to the terms of the Ralph M. Brown Act.
13. CONTRACTOR will assume the responsibility of being the County of Mendocino's representative for the North Coast Tourism Council and is responsible for determining an annual financial commitment to participate in the North Coast Tourism Council to benefit the District.
14. CONTRACTOR shall actively solicit at least one private sector representative to serve on the Mendocino County Workforce Development Board, and should provide the Clerk of the Board of Supervisors with a letter of recommendation for any interested persons.
15. CONTRACTOR shall develop and maintain financial records related to receipt and/or expenditure of all funds received from County.
16. CONTRACTOR agrees to prepare a quarterly report of actual expenditures and program accomplishments for each calendar quarter and shall deliver the quarterly report to the County Chief Executive Officer within a reasonable amount of time.
17. CONTRACTOR will provide and fund such additional projects, programs and activities to promote tourism in Mendocino County as may be made possible through other non-Assessment funding sources. These other funds must be accounted for separately from Assessment funds.
18. CONTRACTOR shall maintain a Reserve Fund equal to \$100,000 or ten percent of the annually projected expenses, whichever is greater, to be held in an interest bearing account, reflected as a line item on the MCTC balance sheet, with expenditures from said fund requiring approval of the MCTC Board.
19. CONTRACTOR shall include line items in each annual budget to fund:
 - a. On-going Board Training and development
 - b. Research and on-going consultation to strengthen marketing and assessment.

20. CONTRACTOR shall continue to perform the following administrative functions:
 - a. Track and report budget percentages for administrative expenses as compared to the DMAI industry wide standards for DMOs of similar
 - b. Benchmark key salaries and staff benefit packages against the CEO and Staff Salary and Benefits Survey produced by DMA-West.

21. Within 30 days of receiving written termination notice from the COUNTY, all copyright and other use rights in any and all promotional and marketing materials, including, but not limited to, any and all proposals, plans, specifications, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's subcontractors or third parties at the request of the Contractor which are currently held or controlled by the Contractor, or which may be created during the term of this contract, shall be provided to any subsequent contractor designated by the County and if there is none they shall be assigned to the County and its assignees to assure their continued availability for use in the promotion and marketing of Mendocino County.

22. Within 30 days of receiving written termination notice from the COUNTY, all existing and unexpended material and financial assets of any kind derived from the BID assessment and match and transferred to CONTRACTOR, shall be provided to any subsequent contractor designated by the County and if there is none they shall be assigned to the County and its assignees to assure their continued availability for use in the promotion and marketing of Mendocino County.

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

CONTRACTOR and COUNTY agree to the following disbursement formula and schedule during the term of this Agreement, provided CONTRACTOR fully complies with all the terms and conditions set forth in this Agreement:

1. Assessment: COUNTY shall transfer to Contractor all assessments, including assessment penalties and interest, less allowable administrative fees and audit and enforcement costs, within thirty (30) days following collection of the assessment by the COUNTY; and
2. Match: The total amount of all payments to be paid shall be the County's fifty percent (50%) match which is calculated based on the prior calendar year's gross receipts and shall be directed to the CONTRACTOR in twelve equal monthly installments on a fiscal year basis. Based on this formula, the County match for FY 2016-2017 is estimated to be \$400,000. CONTRACTOR shall submit a monthly invoice to the COUNTY for the payment.

[END OF PAYMENT TERMS]

EXHIBIT C

INSURANCE REQUIREMENTS

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

CONTRACTOR agrees to indemnify and hold harmless COUNTY, its elected or appointed officials, employees or volunteers against any claims, actions, or demands against them, or any of them, and against any damages, liabilities or expenses, including costs of defense and attorney's fees, for personal injury or death, or for the loss or damage to the property, or any or all of them, to the extent arising out of the performance of this Agreement by CONTRACTOR.

CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of CONTRACTOR'S and subcontractors' employees.

CONTRACTOR shall furnish to COUNTY certificates of insurance with Automobile Liability/General Liability Endorsements evidencing at a minimum the following:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

[END OF INSURANCE REQUIREMENTS]