

PROJECT DEVELOPMENT AGREEMENT

THIS PROJECT DEVELOPMENT AGREEMENT (referred to herein as this “**Development Agreement**” or “**Agreement**”) is entered into as of the 10th day of September, 2024, by and between County of Mendocino with a principal business address at 501 Low Gap Road, Room 1010, Ukiah, California 95482 (referred to herein as “**Customer**” or “**County**”) and Ameresco, Inc. having its principal place of business at 111 Speen Street, Suite 410, Framingham, Massachusetts 01701 (referred to herein as “**Ameresco**” or “**Contractor**”). The Customer and Ameresco may be referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Customer developed and issued Request for Proposals 067-23 published December 12, 2023 (the “**RFP**”) seeking proposals from qualified energy service companies to enter into contracts for (1) planning and consulting services, including the performance of an investment grade audit, that would identify and evaluate cost-saving measures and define proposed project design and scopes; and (2) one or more energy savings performance contracts, for implementation of the projects identified and designed as part of the planning and consulting services;

WHEREAS, the RFP specified that the County would enter into contracts with the selected vendor for both the planning and consulting services and the energy savings performance contracts;

WHEREAS, Ameresco prepared and issued a proposal to Customer in response to the RFP, and Customer issued a notice of award to Ameresco on April 19, 2024;

WHEREAS, Ameresco desires to perform certain energy services including a detailed energy audit for Customer at the facilities identified in Exhibit A attached hereto (the “**Facilities**”); and

WHEREAS, Customer intends to enter into an energy services agreement (“**ESA**”) with Ameresco for implementation of the Scope of Work (referred to below) identified by Ameresco as a result of its work under this Development Agreement in accordance with the Time Table set forth in Schedule 1 attached hereto.

WHEREAS, this Agreement was approved at the September 10, 2024, meeting of the Mendocino County Board of Supervisors;

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows:

1. Ameresco shall complete the following work under this Development Agreement (the “**Development Work**”):

(a) conduct an energy and infrastructure audit of the Facilities;

(b) prepare and deliver to Customer a proposal (the “**Project Proposal**”), which shall include:

(i) the proposed scope of work for installation of energy efficiency and renewable energy improvements (“**Scope of Work**”) which shall take into account improvements already planned for the Facilities, based on a schedule of planned improvements to be provided by Customer to Ameresco within ten (10) days of execution of this Development Agreement;

(ii) the implementation price for the Scope of Work (the “**Implementation Price**”); and

(iii) the estimated cost savings as a result of implementation of the Scope of Work.

Coincident with the completion of the Development Work and Customer’s notification that it has approved the Scope of Work set forth in the Project Proposal, Ameresco will prepare and submit to Customer for Customer review and approval an ESA detailing the terms and conditions related to the implementation of the Project Proposal which ESA may provide for multiple phases of Scope of Work across the Facilities.

2. The Parties agree that Ameresco will complete its Development Work under this Development Agreement in phases and shall develop Scopes of Work for each of the Facilities. Exhibit A sets forth the order in which Ameresco shall conduct its audit and complete its Development Work for each of the Facilities.

3. Ameresco agrees that it will not charge any fees to Customer under this Development Agreement except as provided in the following sentence. In the event the Customer does not enter into an ESA with Ameresco following submission of the Project Proposal but desires to retain any of the Development Work completed by Ameresco under this Agreement, Customer shall compensate Ameresco for such Development Work by paying a development fee in the amount of Twelve Cents (\$0.12) per square foot of building space that the Customer does not enter into an ESA for (the "**Project Development Fee**"). Payment of any Project Development Fee shall require an amendment to this Agreement and authorization by the Customer's Board of Supervisors. If Customer and Ameresco enter into an ESA which includes the Scope of Work, the Implementation Price shall be all inclusive of any Project Development Fee.

4. Ameresco's receipt of an executed copy of this Development Agreement shall be evidence of Customer's agreement to the terms and conditions of this Development Agreement and its authorization of and notification to Ameresco to proceed with the Development Work. Ameresco will thereafter promptly initiate the Development Work.

5. Ameresco's obligation to provide the Development Work under this Development Agreement may be terminated by Ameresco:

(a) Upon seven (7) days written notice, if Ameresco determines in its commercially reasonable judgment that Ameresco is being requested by Customer to furnish or perform services contrary to Ameresco's responsibilities as a qualified professional services firm, provided, however, that Ameresco shall first provide Customer written notice of its determination and the basis for its determination and given Customer ten (10) days to revise or withdraw its request; or

6. This Development Agreement and exhibits hereto, if any, shall (a) constitute the entire agreement between the Parties relating to the subject matter hereof, (b) supersede all previous agreements, discussions, communications and correspondences with respect to the subject matter hereof and (c) only be amended, supplemented or modified by a written instrument executed by both Parties. If any provision of this Development Agreement is held by a court of competent jurisdiction to be unenforceable, no other provision shall be affected thereby, and the remainder of this Development Agreement shall be interpreted as if it did not contain such unenforceable provision.

7. Customer hereby agrees to provide timely and complete access to all necessary property and energy consumption and cost records for the three (3) years preceding the commencement of Ameresco's services. Customer will make available the assistance of such personnel as may be necessary for Ameresco's performance of the Development Work hereunder. If, during the performance of the Development Work, Ameresco should conclude, as a result of its analysis of the data provided by Customer, that it is not able to develop a project consistent with the terms of this Development Agreement, as a result Ameresco may, by written notice to Customer, terminate this Agreement.

Ameresco and Customer represent and warrant to each other that (a) the execution, delivery and performance of this Development Agreement has been duly authorized and approved by all necessary organizational action on the part of such Party, (b) the signatories hereto have been duly authorized by all necessary organizational action of such Party to sign and deliver this Development Agreement and (c) upon execution this Development Agreement will constitute a legal, valid and binding obligation of such Party.

8. In the event Customer and Ameresco fail to execute an ESA as provided herein, because Ameresco will not therefore be engaged to perform services in connection with the implementation of its recommendations,

Ameresco will have no control over such implementation by the Customer or any third party. Accordingly, Ameresco specifically and expressly disclaims all responsibility for the use of or reliance upon such documents or memoranda by the Customer or any third party. Customer hereby agrees to indemnify and hold harmless Ameresco for any liability, loss, cost, expense, or damage which may result from the use of the documents and/or memoranda provided by Ameresco hereunder in the implementation of the energy savings recommendations made by Ameresco without its continued involvement.

9. This Development Agreement shall be governed by the laws of the State in which the Facilities are located.
10. This Development Agreement is subject to the (a) General Terms and Conditions attached hereto as Exhibit B and incorporated herein by this reference and, (b) to the extent applicable to the Scope of Work, Exhibit C attached also attached hereto and incorporated herein by this reference.
11. The term of this Development Agreement shall be from the date this Agreement becomes fully executed by both parties and shall continue through December 31, 2026.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

DEPARTMENT HEAD

DATE

Budgeted: ☒ Yes ☐ No

Budget Unit: 1710 CI

Line Item: 86436

Grant: ☐ Yes ☒ No

Grant No.: N/A

CONTRACTOR/COMPANY NAME

By: _____

Date: 8/26/24

NAME AND ADDRESS OF CONTRACTOR:

Ameresco Inc.

111 Speen Street, Suite 410

Framingham, MA 01710

Attn: General Counsel

COUNTY OF MENDOCINO

By: Maureen Mulheren
MAUREEN MULHEREN, Chair
BOARD OF SUPERVISORS

Date: 09/10/2024

ATTEST:

DARCIE ANTLE, Clerk of said Board

By: Antle
Deputy 09/10/2024

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

DARCIE ANTLE, Clerk of said Board

By: Antle
Deputy 09/10/2024

INSURANCE REVIEW:

By: Darcie Antle
Risk Management

Date: 08/26/2024

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

By: Maureen Mulheren
COUNTY COUNSEL

Date: 08/26/2024

EXECUTIVE OFFICE/FISCAL REVIEW:

By: Antle
Deputy CEO or Designee

Date: 08/26/2024

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐ _____

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: _____

EXHIBIT A

FACILITIES LIST

Mendocino County Library – Willits Branch

1. Mendocino County Library – Willits Branch
390 W. Commercial Street, Willits, CA; Building # 21

Low Gap Complex – East:

1. Administration Center (Including Planning & Building)
501 Low Gap Road, Ukiah, CA; Building # 28
2. Agriculture / Farm Advisor
890 North Bush Street, Ukiah, CA; Building # 36
3. Adult Probation / 911 dispatch / Sheriff I.T.
559 Low Gap Road, Ukiah, CA; Building # 34
4. Emergency Operations Center
880 North Bush Street, Ukiah, CA; Building # 35
5. Probation DRC
579 Low Gap Road, Ukiah, CA; Building # 26
6. Juvenile Hall (5 Buildings)
585 Low Gap Road, Ukiah, CA; Buildings #33A, B, C, D, & E
7. Related parking areas

Low Gap Complex – West:

1. General Services Agency
841 Low Gap Road, Ukiah, CA; Building # 32
2. Facilities & Fleet
851 Low Gap Road, Ukiah, CA; Building # 2
3. Jail 1
931 Low Gap Road, Ukiah, CA; Building # 43
4. Jail 2
975 Low Gap Road, Ukiah, CA; Building # 45
5. Sheriff Training Facility
951 Low Gap Road, Ukiah, CA; Building # 48
6. Jail Kitchen & Laundry
951 Low Gap Road, Ukiah, CA; Building # 47
7. Sheriff & Jail Administration
951 Low Gap Road, Ukiah, CA; Building # 39
8. Related parking areas

Yokayo Social Services Center

1. Children's & Family Services
727 South State Street, Ukiah, CA; Building # 54
2. Social Services – North Yokayo
737 South State Street, Ukiah, CA; Building # 66
3. Social Services – South Yokayo
747 South State Street, Ukiah, CA; Building # 41
4. Social Services Modular
757 South State Street, Ukiah, CA; Building # 51
5. Related parking areas

SCHEDULE 1

TIME TABLE OF EVENTS

The schedule below accounts for the Mendocino County facilities listed in the Agreement in Exhibit A with exception of the Willits Library. Willits Library development and creation of an ESA will be expedited on its own fast track process to deliver an agreement within two months of Project Kickoff and 1st Site Visit (on/around 9/16/2024).

	What	When
1	Execute Project Development Agreement (PDA)	On or about September 10, 2024
2	Review preliminary findings with Customer	On or about October 28, 2024
3	Review final project scope, costs, and savings with Customer	On or about December 20, 2024
4	Deliver Energy Services Agreement (ESA) to Customer	On or about January 06, 2025
5	Finalize Project Buildings Options Final Scope & Pricing Financial Funding Discussion & Review	On or about January 21, 2025
6	Final Scope and Legal Review of Contract Documents	On or about January 21, 2025 thru February 04, 2025
7	Signing of Energy Service Agreement	On or about February 11, 2025
8	Issuance of the “Notice to Proceed” by Customer to Ameresco	On or about February 11, 2025
9	Ameresco issues construction contracts to subcontractors and equipment suppliers	On or about February 24, 2025
10	Construction begins	On or about March 10, 2025

EXHIBIT B

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:** To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend and hold harmless County, its elected officials, officers, employees, agents, and volunteers against all third party claims, suits, actions, costs, expenses (including, but not limited to, reasonable attorney's fees of County Counsel and counsel retained by County, expert fees, litigation costs, and investigation costs), damages, judgments, or decrees arising from the work or the provision of services undertaken pursuant to this Agreement by CONTRACTOR, or by any of CONTRACTOR's subcontractors, any person employed under CONTRACTOR, or under any subcontractor, or in any capacity by CONTRACTOR, except when the injury or loss is caused by the negligence or intentional wrongdoing of County. The provisions of this paragraph are intended to be interpreted as broadly as permitted by applicable law. This provision shall survive the termination, expiration, or cancellation of this Agreement.

In the event that Civil Code section 2782.8 applies to design professional services performed pursuant to this Agreement and only to the extent Civil Code Section 2782.8 applies to those design professional services, CONTRACTOR shall indemnify, defend, and hold harmless County, its elected officials, officers, employees, agents, and volunteers from and against any and all third party claims, demands, actions, losses, liabilities, damage, and costs, including reasonable attorneys' fees, arising out of or resulting from

CONTRACTOR's negligence, recklessness or willful misconduct in performing the design professional services provided under this Agreement. This duty of CONTRACTOR includes the duty of defense, inclusive of that set forth in California Civil Code section 2778 and is subject to any limit provided for in Civil Code section 2872.8(a) of the cost to defend charged to CONTRACTOR. The words "design professional" shall be interpreted as defined in Civil Code section 2782.8, as it may be amended from time to time.

3. **INSURANCE :** CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies as designated in the attached Attachment A, and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance as provided for in the attached Attachment A, 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.

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 subcontractors' employees.

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. **NOT USED**

7. **TAXES:** Payment of all applicable federal, state, and local taxes relative to CONTRACTOR'S performance of the Development Work shall be the sole responsibility of the CONTRACTOR.
8. **OWNERSHIP OF DOCUMENTS:** CONTRACTOR hereby 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, but are subject to payment of the Project Development Fee.

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.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF MENDOCINO
Facilities and Fleet Division
501 Low Gap Road, Room 1010
Ukiah, CA 95482
Attn: Facilities and Fleet Manager

To CONTRACTOR: Ameresco Inc.
111 Speen Street, Suite 410
Framingham, MA 01710
Attn: General Counsel

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 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, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.
 - 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, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
 - 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. **NOT USED.**
15. **COMPLIANCE WITH LICENSING REQUIREMENTS:** CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses. To the extent required by law, CONTRACTOR shall display licenses in a location that is reasonably conspicuous. Upon COUNTY's request, CONTRACTOR shall file copies of same with the County Executive Office.

CONTRACTOR represents and warrants to COUNTY that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.
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 under this Agreement, 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 relative to this Agreement.

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 electronically 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 Exhibit B. 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 notice. Such notice shall be in writing and may be issued by any COUNTY officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person designated by the County Board of Supervisors. 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, in accordance with the provisions of paragraph 3 of the Agreement.
20. NOT USED.
21. NOT USED.
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. NOT USED.

26. HEADINGS: Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
27. NOT USED.
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 such approval not to be unreasonably withheld, conditioned or delayed.
- 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. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
 - 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 of this Exhibit B), Ownership of Documents (Paragraph 8 of this Exhibit B), and Conflict of Interest (Paragraph 9 of this Exhibit B), 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. INTELLECTUAL PROPERTY WARRANTY: CONTRACTOR warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONTRACTOR PRODUCTS") to be provided by CONTRACTOR in the performance of this Agreement, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONTRACTOR hereby grants to COUNTY, or represents that it has secured from third parties, a non-exclusive irrevocable license (or sublicense) to reproduce, distribute, perform, display, prepare derivative works, make, use, sell, import, use in commerce, or otherwise utilize CONTRACTOR PRODUCTS to the extent reasonably necessary to use the CONTRACTOR PRODUCTS in the manner contemplated by this Agreement.

CONTRACTOR further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONTRACTOR PRODUCTS provided to COUNTY under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the COUNTY relating to a CONTRACTOR PRODUCT, CONTRACTOR shall indemnify and defend the COUNTY pursuant to Paragraph 2 of this Agreement.

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.

33. ELECTRONIC COPIES: The parties agree that an electronic copy, including email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.
34. COOPERATION: The Parties shall cooperate with each other in the performance of all work hereunder.
35. PERFORMANCE STANDARD: CONTRACTOR shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in CONTRACTOR's profession. COUNTY has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of CONTRACTOR's work by COUNTY shall not operate as a waiver or release. If COUNTY determines that any of CONTRACTOR's work is not in accordance with such level of competency and standard of care, COUNTY, in its sole discretion, shall have the right to do any or all of the following: (a) require CONTRACTOR to meet with COUNTY to review the quality of the work and resolve matters of concern in accordance with Paragraph 28 of this Exhibit B; (b) not used; (c) terminate this Agreement pursuant to the provisions of Paragraph 19 of this Exhibit B (Termination) or (d) pursue any and all other remedies at law or in equity.
36. ATTORNEYS' FEES: In any action to enforce or interpret the terms of this Agreement, including but not limited to any action for declaratory relief, each party shall be solely responsible for and bear its own attorneys' fees, regardless of which party prevails.

[END OF GENERAL TERMS AND CONDITIONS]

ATTACHMENT A

INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain at its expense the following insurance coverage:

- (i) Workers' Compensation as required by applicable California law.
- (ii) Employers Liability Insurance \$1 million
- (iii) Commercial General Liability Insurance \$1 million per occurrence, \$2 million aggregate covering contractual liability, bodily injury (including death) and property damage.
- (iii) Commercial Automobile Liability Insurance, including owned, non-owned and hired automobiles: Combined Single Limit of \$1 million covering bodily injury (including death) and property damage.
- (iv) Umbrella Liability \$5 million

Upon request CONTRACTOR shall deliver to COUNTY a Certificate of Insurance naming COUNTY as an additional insured party under paragraph (iii), above, and shall use commercially reasonable efforts to provide COUNTY with thirty (30) days' notice of cancellation.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT C

PUBLIC PROJECT PROVISION

CONTRACTOR shall additionally comply with the following provisions in carrying out this AGREEMENT to the extent applicable to the Scope of Works being performed under the AGREEMENT.

1. **COMPLIANCE WITH COUNTY POLICIES:** The CONTRACTOR shall comply with the various policies regarding the preservation of our natural resources which may impose specific requirements on the CONTRACTOR.
 - a. The Storm Water Management Program includes specific requirements for grading and construction projects within the County including the implementation of Best Management Practices (BMP) to prevent the discharge of construction waste, debris, sediment, or contamination from entering the storm drainage system or natural waterways. For more information, refer to the following web page of the County Department of Planning and Building Services:
<https://www.mendocinocounty.org/government/planning-building-services/stormwater/>
 - b. The CONTRACTOR shall be responsible for purchasing products that minimize environmental impacts, toxics, pollution, hazards to workers, and community safety to the greatest extent practicable. The CONTRACTOR shall also be responsible for the purchasing of products that include recycled content, are durable and long-lasting, conserve energy and water, use agricultural fibers and residues, reduce greenhouse gas emissions, use unbleached or chlorine free manufacturing processes, and are lead-free and mercury-free.
 - c. Waste Stream Reduction goals include programs to maximize the salvage and recycling of demolition and construction debris and document waste stream diversion. For more information refer to the Construction and Demolition Forms handout on the following web page of the County Department of Planning and Building Services:
<https://www.mendocinocounty.org/government/planning-building-services/forms-and-handouts/>
2. **MSDS SHEETS:** The CONTRACTOR must present to the COUNTY all Material Safety Data Sheets for all materials used in all phases of the project prior to beginning work. No materials, other than those that have MSDS sheets, shall be permitted on the COUNTY premises.
3. **PAYMENT OF PREVAILING WAGES:** Pursuant to the provisions of the Labor Code of the State of California, the Department of Industrial Relations has made a determination of the rate of per diem wages to be paid on the prevailing rate of pay for regular, holiday and overtime work in the locality in which the public work is to be performed, for each craft, classification, or type of workman needed to execute the contract. All County of Mendocino projects greater than \$1,000 require that contractors adhere to Prevailing Wage requirements (California Labor Code, Sections 1770 through 1775). The rates can be found online here:
<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.
4. **CERTIFIED PAYROLL RECORDS:** Pursuant to Labor Code Section 1776, the CONTRACTOR and any or all subcontractors shall keep accurate payroll records. A certified copy of all payroll records for work performed under this contract shall be furnished upon request to a representative of the awarding body. Pursuant to Senate Bill 854 (Stats. 2014, chapter 28), the CONTRACTOR and subcontractors

are required to furnish certified payroll reports directly to the Department of Industrial Relations.

5. EMPLOYMENT OF APPRENTICES: The CONTRACTOR and subcontractor performing work in an apprentice-able craft or trade shall comply with Section 1777.5 relating to Apprentices on public works projects.
6. LABOR CODE SECTION 1771.1(a). The CONTRACTOR, on behalf of itself and all subcontractors performing work under this agreement, certifies that it is aware of the requirements of Labor Code Section 1771.1(a), which is restated below, and has provided proof of the CONTRACTOR and all subcontractors' current registration to perform public work pursuant to Labor Code Section 1725.5.

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

7. This project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.
8. BONDING: Any contractor awarded a public works contract in excess of twenty-five thousand dollars (\$25,000) shall provide approved payment and performance bonds to the county before commencement of work.