

**COUNTY OF MENDOCINO
AGREEMENT FOR SERVICES INCLUDING EXAMINATION OF CONFIDENTIAL TAX
RECORDS**

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the “COUNTY”, the MENDOCINO COUNTY TOURISM COMMISSION, a California non-profit mutual benefit corporation, hereinafter referred to as “MCTC”, and CIVITAS ADVISORS, INC., a California corporation, 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, under a separate agreement, COUNTY provides funds to MCTC for its services relating to promotion of County tourism on behalf of the Mendocino County Lodging Business Improvement District (“BID”), through both an assessment imposed by the BID and moneys from COUNTY’s general fund; and

WHEREAS, the BID was created pursuant to the Parking and Business Improvement Area Law of 1989 (Streets and Highways Code section 36500 *et seq.*; the “89 Law”); and

WHEREAS, since 2020, the BID Advisory Board and MCTC have recommended evaluating the possibility of an organizational transition from operating under the 89 Law to a new district formed pursuant to the Property and Business Improvement District Law of 1994 (the “94 Law”), as well as seeking additional funding sources for the promotion of County tourism; and

WHEREAS, MCTC previously engaged CONTRACTOR for its assistance in establishing in the County a district pursuant to the 94 Law; and

WHEREAS, the 2023-2024 Annual Report for the BID includes action items for MCTC relating to transitioning the BID from one operating under the 89 Law to one operating under the 94 Law, and to expand to include tourism facing businesses in addition to lodging businesses; and

WHEREAS, in furtherance of the action items of the 2023-2024 Annual Report, MCTC desires to proceed with transitioning from the current BID to one established pursuant to the 94 Law, and since any such transition will involve review and possible actions by COUNTY, desires to work with COUNTY in such process and to pay for this process with MCTC funds; and

WHEREAS, MCTC and COUNTY desire to obtain CONTRACTOR for its services to establish a new tourism marketing district pursuant to the 94 Law and the services for the disestablishment of the existing BID established under the 89 Law; and

WHEREAS, under this Agreement, CONTRACTOR will be providing services to COUNTY and MCTC will be solely responsible for payment of all services rendered by CONTRACTOR to COUNTY; and

WHEREAS, CONTRACTOR's services under this Agreement will include examination of all information or material regarding transient occupancy taxes and sales or transactions and use tax records collected by or on behalf of COUNTY, to be provided to CONTRACTOR pursuant to the terms of this Agreement; and

WHEREAS, the Bradley-Burns Uniform Sales and Use Tax Law (Revenue and Taxation Code Section 7200, et seq.), authorizes a contractor of the COUNTY to examine sales or transactions and use tax records of the Department of Tax and Fee Administration related to COUNTY under specified circumstances; and

WHEREAS, CONTRACTOR is willing to provide such services and to examine Confidential Tax Records 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", CONTRACTOR accepts such engagement, and MCTC agrees to pay CONTRACTOR for its services provided hereunder, 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
- Exhibit D Mendocino County ePayables Information

The term of this Agreement shall be from September 1, 2023, and shall continue through August 31, 2024.

The compensation payable by MCTC to CONTRACTOR hereunder shall not exceed SEVENTY-SIX THOUSAND FIVE HUNDRED DOLLARS (\$76,500.00) for the term of this Agreement.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

Julia Vogt 9/15/2023
DEPARTMENT HEAD DATE

Budgeted: Yes No

Budget Unit: _____

COUNTY OF MENDOCINO

By: Glenn McGourty
GLENN MCGOURTY, Chair
BOARD OF SUPERVISORS

Date: 09/26/2023

CONTRACTOR/COMPANY NAME:

By: J. G. Little Sep 14, 2023

NAME AND ADDRESS OF CONTRACTOR:

Civitas Advisors Inc.,
1102 Corporate Way., Ste 140
Sacramento, CA 95831

MENDOCINO COUNTY TOURISM
COMMISSION

By: Tina St

105 W Clay St.,
Ukiah, CA 95482

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:

DARCIE ANTLE, Clerk of said Board

By: Amap
Deputy 09/26/2023

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: Amap
Deputy 09/26/2023

INSURANCE REVIEW:

By: Darcie Antle
Risk Management

Date: 09/13/2023

COUNTY COUNSEL REVIEW:
APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
County Counsel

By: Christian M. Curtis
Deputy

Date: 09/13/2023

EXECUTIVE OFFICE/FISCAL REVIEW:

By: [Signature]
Deputy CEO or Designee

Date: 09/13/2023

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: _____

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. CONFIDENTIAL TAX RECORDS: For the purpose of assisting the CONTRACTOR with performing its services under this Agreement, pursuant to the following terms and conditions, COUNTY will provide CONTRACTOR with certain Confidential Tax Records.
 - a. Definition of Confidential Tax Records: For purpose of this Agreement, "Confidential Tax Records" shall include all information or material regarding (1) sales, transactions and use taxes and (2) transient occupancy taxes collected by or on behalf of COUNTY which are provided to CONTRACTOR pursuant to the terms of this Agreement.
 - b. Obligations of CONTRACTOR: CONTRACTOR shall hold and maintain the Confidential Tax Records in strictest confidence. CONTRACTOR shall carefully restrict access to Confidential Tax Records to its employees and any necessary subcontractors, and shall require employees and subcontractors to sign nondisclosure restrictions at least as protective in this Agreement. Notwithstanding the foregoing, CONTRACTOR shall not disclose to any third party the gross receipts of any person or entity paying sales, transactions and use taxes or transient occupancy taxes to COUNTY, or the amount of tax generated. CONTRACTOR shall not for any purpose publish, copy, or otherwise disclose to others or permit the use by others of any Confidential tax Records. CONTRACTOR shall not permit any Confidential Tax Records to be photocopied, scanned, transmitted via facsimile, photographed or reproduced in any way without the prior written approval of the COUNTY. Any report prepared by CONTRACTOR using Confidential Tax Records shall be written in such a way as to preclude the identification of individual business or individual tax payers by reading the report, provided that this shall not prohibit the preparation and distribution of a report listing persons, entities, hotels, motels, and property management agencies without disclosure of their respective gross receipts or the amount of sales, transactions and use taxes or transient occupancy taxes generated. Any information from Confidential Tax Records used for the purpose of converting a tourism business improvement district developed under this Agreement shall only be shared in aggregate, de-identified form for four (4) or more businesses as long as no single member of the group is the source of a disproportionate percentage, defined herein as eighty percent (80%), of the group total.
 - c. Disclosure of Confidential Tax Records: In the event Confidential Tax Records are disclosed to any third party through no fault or CONTRACTOR, CONTRACTOR shall not be held liable for such disclosure.
 - d. Required Disclosure: CONTRACTOR is required to disclose information contained in, or derived from, Confidential Tax Records only to an officer or employee of COUNTY who is authorized by resolution to examine the Confidential Tax Records.

- e. CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, or any lodging establishment as defined in Mendocino County Code Section 5.20.020 during the term of this Agreement.
 - f. CONTRACTOR is authorized by this Agreement to examine sales, use or transactions and use tax records of the Department of Tax and Fee Administration. Information obtained by examination of Department of Tax and Fee Administration records shall be used for purposes related to collection of local sales or transactions and use tax or for other governmental function of COUNTY as set forth by resolution adopted pursuant to Section 7056(b) of the Revenue and Taxation Code. The resolution shall designate the CONTRACTOR as a person authorized to examine sales or transactions and use tax records tax records and certify that this Agreement meets the requirements set forth above and in Section 7056(b)(1) of the Revenue and Taxation Code.
 - g. CONTRACTOR shall not disclose any specific, identifiable Confidential Tax Records or information to anyone not authorized by resolution adopted by COUNTY Board of Supervisors. Disclosure of specific, identifiable Confidential Tax Records or information in violation of this Agreement, Revenue and Taxation Code Section 7056, or any other relevant legal provisions shall be cause for immediate termination of this Agreement.
 - h. CONTRACTOR is prohibited from retaining the information contained in, or derived from those Confidential Tax Records, after this Agreement has expired. Within ten (10) days of any expiration or termination of this Agreement, or the written request of COUNTY, Contractor shall immediately return to COUNTY any and all Confidential Tax Records, notes, and other written, printed or tangible records in its possession pertaining to Confidential Tax Records, including any information contained in or derived from the Confidential Tax Records. The provisions of this Agreement related to nondisclosure obligations and the duty to hold Confidential Tax Records in confidence shall survive the termination of this Agreement.
2. INDEMNIFICATION: To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable), CONTRACTOR shall assume the defense of, indemnify, and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, demands, damages, costs, liabilities, and losses whatsoever that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its officers, employees, agents, contractors, subconsultants, or any person under its direction or control, in connection with the CONSULTANT's performance of its obligations under this AGREEMENT, unless arising out of the sole negligence or willful misconduct of COUNTY.

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.

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 subcontractor, 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 by MCTC to CONTRACTOR as provided in Exhibit "B" hereto as funding permits. MCTC shall be solely responsible for all payments for services performed by CONTRACTOR in accordance with this Agreement, and COUNTY shall have no responsibility for payments to CONTRACTOR.

If MCTC over pays CONTRACTOR for any reason, CONTRACTOR agrees to return the amount of such overpayment to MCTC, or at MCTC's option, permit MCTC to offset the amount of such overpayment against future payments owed to CONTRACTOR under this Agreement or any other agreement.

All invoices, receipts, or other requests for payment under this contract must be submitted by CONTRACTOR to MCTC in a timely manner and consistent with the terms specified in Exhibit B. In no event shall MCTC be obligated to pay any request for payment for which a written request for payment and all required documentation was first received more than six (6) months after this Agreement has terminated, or beyond such other time limit as may be set forth in Exhibit B.

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 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.

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
Department of Planning & Building Services
860 N Bush St.,
Ukiah, CA 95482
Attn: Director

To CONTRACTOR: Civitas
1102 Corporate Way
Sacramento, CA 95831
ATTN: John Lambeth

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, 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. 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. 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, 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 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. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its services hereunder between September 1, 2023, and August 31, 2024, shall not exceed \$76,500 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. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.
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. 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), 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. **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, an 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 facsimile copy, 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 WITH COUNTY

Contractor shall cooperate with County and County staff 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; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of paragraph 19 (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]

EXHIBIT A

DEFINITION OF SERVICES

CONTRACTOR shall provide the following services:

Overview

The formation of the Mendocino County Tourism Marketing District (MCTMD) (and disestablishment of the current Mendocino County Lodging Business Improvement District (BID)) is anticipated over the course of twelve (12) months through a series of six (6) steps, pursuant to the Property and Business Improvement District Law of 1994 (94 Law) and the Parking and Business Improvement Area Law of 1989 (89 Law). The six (6) steps are briefly described below and outlined in further detail on the following pages.

While Civitas (Contractor) has projected a specific amount of time for the MCTMD formation, there are many unknown variables in a project of this nature. Although we would diligently work towards the formation of the MCTMD, factors outside Civitas' control could delay or thwart even the best-developed plans. Civitas will work to minimize risks and complete the project at the earliest possible date.

SUMMARY

Step One: Initiation/Infrastructure

Step one will entail the creation of the necessary leadership structure that is integral to carrying out the MCTMD establishment project. During this step Civitas, the County, MCTC and business owners will identify their respective roles in the MCTMD formation process. This step also includes gathering information on the district.

Step Two: Outreach and Consensus Building

Outreach efforts are undertaken in step two to connect with business owners and local jurisdiction officials and gain their support for the proposed MCTMD.

Step Three: Document Preparation

In step three, Civitas shall draft the necessary documents to form the MCTMD. Civitas will continue to work closely with business owners, the County, and MCTC to ensure documents reflect the needs and priorities of businesses that will pay the proposed MCTMD assessment.

Step Four: Document Revision

Documents drafted by Civitas will be submitted to the County, business owners, and MCTC for review. Based on their input, Civitas will revise documents as necessary and prepare final documents.

Step Five: Hearing Process

Civitas will assist with the Board of Supervisors hearing process to establish the MCTMD.

Step Six: Disestablishment Process

Finally, Civitas will assist with the disestablishment process for the existing BID.

Step One: Initiation and Database Development

This task includes development of program infrastructure necessary to carry out the conversion of the MCTMD. Civitas will work with the County to create the database of businesses that will pay the proposed MCTMD assessment and will assist with the steps necessary to gain authorization for access to the confidential information required for the database. The database will be used for various purposes throughout the project, including mailings, estimating the MCTMD budget, and estimating each business' petition weight. The County shall provide to Civitas the relevant records, which may include but are not limited to business name and address, owner name, business type or occupancy, revenue, and transient occupancy tax and sales or transactions and use tax information. Pursuant to the terms of this Agreement, access to this database shall be limited solely to Civitas and authorized County personnel.

The database for this project will rely on information from local government sources. Errors can and will occur in this data. While Civitas will do its utmost to identify and correct any errors, it is acknowledged that Civitas shall not be held liable for any inaccuracies or errors in data from local government sources. Civitas recommends that the County continue to pursue data correction strategies during and after MCTMD conversion, including mailings and error checking by local officials.

1.1 Leadership Infrastructure

A MCTMD formation project steering committee composed of MCTC staff, local business owners, and County staff will be formed. Civitas will work with the steering committee to provide guidance and keep the project on track.

1.2 Examination of Sales and Transactions and Use Tax Records

In accordance with the requirements and conditions outlined in this Agreement, Civitas will work with the County and Hinderliter, De Llamas and Associates (HdL) to examine and collect the sales or transactions and use tax records necessary for the MCTMD database.

1.3 Examination of Transient Occupancy Tax Records

In accordance with the requirements and conditions outlined in this Agreement, Civitas will work with the Auditor-Controller-Treasurer-Tax Collector to examine and collect the transient occupancy tax records necessary for the MCTMD database.

1.4 Database Development

Civitas will compile all relevant business data into a database which will be used for estimating the MCTMD budget and estimating each business' petition weight.

Step Two: Outreach and Consensus Building

The steering committee will have the primary responsibility of conducting outreach to, and building consensus among, business owners within the proposed MCTMD. Reaching out to business owners, business organizations, and local jurisdiction staff and officials is a crucial piece of the formation process.

2.1 Develop Outreach Program

Civitas will work with the County to develop an effective outreach program. The program will include educating local jurisdiction staff and officials and business owners and seeking their input on the best strategy for Mendocino County.

2.2 Establish District Parameters

During the outreach process, priorities for services will be established. An assessment rate will be developed. Other elements of the MCTMD, such as governance provisions, will also be established.

Step Three: Document Preparation

Civitas will utilize information gathered in the outreach and consensus building process to prepare documents required for MCTMD formation.

3.1 Management District Plan

Civitas will prepare a Management District Plan that complies with California law. The Management District Plan will include, but is not limited to:

- District rationale and objectives;
- MCTMD boundaries, benefit zones, and business classifications;
- Service plan and annual budget;
- Assessment rate;
- Governance structure;
- District rules and regulations; and
- A map of the MCTMD and list of businesses.

3.2 Petition

The 94 Law requires signed petitions from businesses proposed to pay the district assessment to begin the MCTMD formation process. Civitas will prepare a draft petition pursuant to the 94 Law and based on information contained in the Management District Plan.

3.3 Resolutions and Notice

Civitas will draft the resolutions and/or ordinances necessary to form the MCTMD. The resolutions and/or ordinances will include parameters from the Management District Plan and other legally required elements. Civitas will also draft the notice that is required to be sent to businesses that will pay the proposed MCTMD assessment.

Step Four: Document Revision

Draft documents will be submitted to the steering committee, the County, and MCTC for review. Civitas will revise drafts as necessary pursuant to feedback received.

4.1 Steering Committee Review

Civitas will submit draft documents to the steering committee for review. Civitas will revise documents to incorporate comments from the steering committee as necessary.

4.2 Consultation with Counsel

Civitas' staff will work with the County Counsel's office to obtain their review and approval of documents. Civitas will incorporate their comments as necessary and prepare finalized documents.

Step Five: Hearing Process

Once the steering committee and County have approved final documents, Civitas will assist in submitting the MCTMD establishment project to the Board of Supervisors.

5.1 District Finalization

Civitas will take all necessary steps to prepare for MCTMD establishment, including coordinating with County staff to set and prepare for hearings and discussing legal matters with the County Counsel. Frequent phone calls, email correspondence, and other communications between Civitas and County Counsel and/or staff will be essential throughout this step to ensure smooth facilitation.

5.2 Petition Collection

Civitas will work with the steering committee to ensure adequate petition support has been garnered to ensure compliance with the 94 Law. The steering committee and MCTC will be responsible for collecting signed petitions from businesses. Civitas will create a petition tracker based on the MCTMD database and will submit the petition tracker and all signed petitions to the County for verification. The petition tracker will show all calculations used for the basis of determining that the minimum petition threshold has been met. The County assumes the role of the lead jurisdiction for MCTMD formation, and therefore will be responsible for ensuring the petition process meets all legal requisites pursuant to the 1994 Law.

5.3 Resolution of Intention and Resolution Requesting Consent

Civitas will virtually attend the Board of Supervisors hearing on the Resolution of Intention and Resolution Requesting Consent from the other jurisdictions proposed to be included in the MCTMD boundaries.

After the Resolution of Intention is adopted, Civitas will coordinate with County staff to ensure notice of the upcoming public meeting and hearing is mailed to businesses proposed to pay the MCTMD assessment, in accordance with the 94 Law.

After the Resolution Requesting Consent is adopted, Civitas will coordinate with local jurisdiction staff to facilitate the adoption of a Resolution Granting Consent from each local jurisdiction.

5.4 Public Meeting

Civitas will assist the County with preparation for the public meeting by outlining the requirements of the meeting and working with County Counsel to ensure compliance with the 94 Law.

5.5 Public Hearing and Adoption of Resolution of Formation

Civitas will attend the public hearing virtually and be prepared to answer questions and address any issues that may arise.

Step Six: Disestablishment Process

Civitas will prepare documents required for the disestablishment of the existing BID. Draft documents will be submitted to the County for review. Civitas will incorporate County comments as necessary and prepare finalized documents. After the Resolution of Intention is adopted, Civitas will coordinate with County staff to ensure notice of the required public hearing is published and mailed in accordance with the 89 Law. Civitas will attend the public hearing virtually and be prepared to answer questions and address any issues that may arise.

Disestablishment of the BID is intended to happen concurrently with the establishment of the MCTMD, such that assessments under the BID will cease at the same time the assessments under the MCTMD will begin.

Projected Timeline

Action	Date	Responsible Party
Initiate project	July 2023	Civitas, Visit Mendocino County (VMC), Mendocino County
Draft Resolution	July – August 2023	Civitas, County
Data Collection	August - September 2023	Civitas, County, Cities
Outreach to lodging, wineries, and attractions	June – September 2023	Steering Committee
Board of Supervisors – Resolution Releasing Sales Tax Data	August 29, 2023	Civitas, County
Obtain sales tax data	September 2023	Civitas
Draft initial draft Management District Plan (MDP)	September 2023	Civitas
Steering Committee approval of MDP	October 2024	Civitas, Steering Committee
Submit draft MDP and Petition to MCTC and County Staff; ongoing review	October 2023	Civitas, County
Final MDP and Petition approved by County Staff	December 2023	County Staff
Petition Drive	December 2023 – March 2024	Steering Committee
Submit Petitions totaling over 50% of assessment to County	Early March 2024	Steering Committee, County
Board of Supervisors – Resolution of Intention and Resolution to Request Consent from Fort Bragg, Point Arena, Willits, and Ukiah <ul style="list-style-type: none"> • Resolution of Intention to Form '94 District and Resolutions to Request Consent from Fort Bragg, Point Arena, Willits, and Ukiah (<i>Can be on Consent Calendar</i>) 	Late March 2024	County
Mail <ul style="list-style-type: none"> • Notice of Public Meeting/Hearing - <i>Should be mailed 1 day after ROI is adopted. Must be mailed 45 days before public hearing. Clerk certification of mailing is required.</i> 	Late March 2024	Civitas, County
Resolution Granting Consent <ul style="list-style-type: none"> • Fort Bragg City Council Grant Consent to the County of Mendocino • Point Arena City Council Grant Consent to the County of Mendocino • Willits City Council Grant Consent to the County of Mendocino 	March – May 2024	Civitas, VMC

<ul style="list-style-type: none"> Ukiah City Council Grant Consent to the County of Mendocino 		
Board of Supervisors – Public Meeting <ul style="list-style-type: none"> Public Meeting – No action required - <i>Must be held at least 10 days after Notice of Public Meeting/Hearing is mailed and at least 7 days before Public Hearing is held.</i> 	Early May 2024	County
Board of Supervisors – Public Hearing <ul style="list-style-type: none"> Public Hearing & Adopt Resolution of Formation - <i>Must be held at least 45 days after Notice is mailed.</i> 	Late May 2024	County
'89 District Expires <i>(Collections cease unless '89 district is renewed)</i>	June 30, 2024	County
'89 District Disestablishment <i>(timing of disestablishment process TBD following actual timing of '94 district formation;</i> <ul style="list-style-type: none"> Resolution of Intention Disestablishing '89 District Mail and publish disestablishment notice Public Hearing 	July - August 2024	County
'94 District Begins	July 1, 2024	MCTMD

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

MCTC will be responsible for payment of the following professional fees and costs and expenses as provided below.

Contractor proposes a fixed monthly fee of \$6,000 per month for twelve (12) months, plus expenses. Contractor will send MCTC a monthly invoice for fees and costs incurred. Invoices will include the fixed professional fee and expenses. The basis of calculation or other method of determining expenses will be clearly identified by item and amount.

Ordinary costs and expenses, including telephone charges, postage, and photocopying will be billed at four percent (4%) of professional fees. Other costs, such as travel, overnight shipping, bulk mailing and printing costs (over 100 pages) shall be billed at Contractors' actual cost. Expenses are not expected to exceed \$4,500.

Contractor has projected a specific amount of time (12 months) for the MCTBID conversion. Factors that could increase the scope of work and estimated costs outlined above include additional meetings not described in this proposal, analysis of additional issues above those described in this proposal, or a lack of steering committee and business owner involvement in the project. There are many unknown variables in a project of this nature. Although Contractor will work diligently to form the MCTMD, factors outside Contractor's and MCTC's control could delay or thwart even the best-developed plans. If additional work is required after 12 months, the scope and compensation may be amended by mutual agreement of the parties.

[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. Insurance requirements shall be in addition to, and not in lieu of, Contractor's indemnity obligations under Paragraph 2 of this Agreement.

CONTRACTOR shall obtain and maintain insurance coverage as follows:

- 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.

CONTRACTOR shall furnish to COUNTY certificates of insurance evidencing the minimum levels described above.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT D

MENDOCINO COUNTY EPAYABLES INFORMATION

The County of Mendocino is currently making credit card payments to all of our vendors and suppliers who qualify. To qualify, vendors need to currently accept credit card payments. To achieve this more efficient form of payment, the County has partnered with Bank of America and their ePayables credit card program. This electronic initiative will yield many benefits to its participants:

- Expedited receipt of cash – electronic credit card payments provide cash flow benefits by eliminating mail and paper check float
- Elimination of check processing costs
- Remittance data transmitted with payment for more efficient back-end reconciliation
- No collection costs associated with lost or misplaced checks
- Reduced exposure to check fraud
- More efficient handling of exception items
- Fits with existing accounting software – requires no purchase of software, no modifications to existing accounts receivable system and no change to bank accounts.
- Going green with paperless electronic credit card payments help conserve the environment by eliminating printing and mailing of paper checks.

For information regarding the payment process, please email Auditorap@mendocinocounty.org.

Additional information regarding the Bank of America Program is also available at:

http://corp.bankofamerica.com/business/ci/landing/epayables-vendors?cm_mmc=sb-general--vanity--sg01vn000r_epayablesvendors--na