

**COUNTY OF MENDOCINO
STANDARD SERVICES AGREEMENT**

This Agreement is by and between the MENDOCINO COUNTY AIR QUALITY MANAGEMENT DISTRICT, hereinafter referred to as the "DISTRICT", and CHRISTIANA DARLINGTON, hereinafter referred to as the "CONTRACTOR".

WITNESSETH

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

WHEREAS, DISTRICT desires to obtain CONTRACTOR for its legal services; and,

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

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

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements
Exhibit D	Mendocino DISTRICT ePayables Information

The term of this Agreement shall be from the date this Agreement becomes fully executed by all parties (the "Effective Date"), and shall continue through June 30, 2020.

The compensation payable to CONTRACTOR hereunder shall not exceed Forty Thousand Five Hundred (\$40,500) for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of June _____, 2019.

DEPARTMENT FISCAL REVIEW:

Barbara Moed 6-7-19

BARBARA A. MOED, APCO

Department Head

Date

Budgeted: ☒ Yes ☐ No

Budget Unit: 0327

Line Item: 86-2183, Legal Services

Grant: ☐ Yes ☒ No

Grant No.: _____

CONTRACTOR/COMPANY NAME

By: Christiana Darlington

NAME AND ADDRESS OF CONTRACTOR:

Christiana Darlington, Attorney

5622 Black Willow St.

Rocklin CA 95677

COUNTY OF MENDOCINO

By: _____

CARRE BROWN, Chair

AIR QUALITY MANAGEMENT DISTRICT BOARD

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

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: _____

Deputy

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

CARMEL J. ANGELO, Clerk of said Board

By: _____

Deputy

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: M. Kinn
Deputy

Date: 6/3/19

INSURANCE REVIEW:

By: Carmel J. Angelo
Risk Management

Date: 6/6/19

EXECUTIVE OFFICE/FISCAL REVIEW:

By: [Signature]
Deputy CEO

Date: 6/3/19

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 DISTRICT in any capacity whatsoever, and DISTRICT 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 DISTRICT harmless from any and all liability which DISTRICT 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 DISTRICT.

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 DISTRICT 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 DISTRICT 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 DISTRICT agency concerned.

Notwithstanding the foregoing, if the DISTRICT determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, DISTRICT 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 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 DISTRICT, its officers, agents, and employees, from and against any and all claims, demands, damages, costs, liabilities, and losses whatsoever alleged to be occurring or resulting in connection with the CONTRACTOR'S performance or its obligations under this AGREEMENT, unless arising out of the sole negligence or willful misconduct of DISTRICT. "CONTRACTOR'S performance" includes CONTRACTOR'S action or inaction and the action or inaction of CONTRACTOR'S officers, employees, agents and subcontractors.
3. **INSURANCE AND BOND:** CONTRACTOR shall at all times during the term of the Agreement with the DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to DISTRICT a written report, in such form as may be required by DISTRICT 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 DISTRICT'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 DISTRICT the opportunity to review and inspect such evidence, including the scene of the accident.
6. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto as funding permits.

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

In the event CONTRACTOR claims or receives payment from DISTRICT for a service, reimbursement for which is later disallowed by DISTRICT, State of California or the United States Government, the CONTRACTOR shall promptly refund the disallowance amount to DISTRICT upon request, or at its option DISTRICT may offset the amount disallowed from any payment due or that becomes due 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 DISTRICT in a timely manner and consistent with the terms specified in Exhibit B. In no event shall DISTRICT 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 DISTRICT 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 DISTRICT, 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 DISTRICT to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the DISTRICT and any assignee of the DISTRICT an express royalty – free license to retain and use said Documents and Materials. The DISTRICT'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 DISTRICT'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 DISTRICT: Mendocino County
Air Quality Management District
306 E. Gobbi St.
Ukiah, CA 95482

To CONTRACTOR: Christiana Darlington
Attorney at Law
5622 Black Willow St.
Rocklin, CA 95677
christiana@clereinc.net

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 DISTRICT PROPERTY: CONTRACTOR shall not use DISTRICT 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 DISTRICT, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the DISTRICT, CONTRACTOR shall provide the DISTRICT 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 DISTRICT'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 DISTRICT 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 DISTRICT facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the DISTRICT 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 DISTRICT's request, CONTRACTOR shall file copies of same with the DISTRICT Executive Office.

CONTRACTOR represents and warrants to DISTRICT 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 DISTRICT, 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 DISTRICT, and shall furnish to the DISTRICT, within sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the DISTRICT 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 DISTRICT 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 DISTRICT of Mendocino, California, CONTRACTOR shall, upon request of the DISTRICT, make such books and records available to the DISTRICT for inspection at a location within DISTRICT or CONTRACTOR shall pay to the DISTRICT the reasonable, and necessary costs incurred by the DISTRICT 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 DISTRICT 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 DISTRICT, 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 DISTRICT makes the final or last payment or within four (4) years after any pending issues between the DISTRICT and CONTRACTOR with respect to this Agreement are closed, whichever is later.

17. **DOCUMENTS AND MATERIALS:** CONTRACTOR shall maintain and make available to DISTRICT 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 DISTRICT), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the DISTRICT'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 DISTRICT 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 DISTRICT officer authorized to execute or amend the contract, the DISTRICT Chief Executive Officer, or any other person designated by the DISTRICT Board of Supervisors. In the event that the DISTRICT 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 legal services shall not exceed \$40,500 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.
20. **NON APPROPRIATION:** If DISTRICT 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, DISTRICT may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR. Upon termination, DISTRICT shall remit payment for all products and services delivered to DISTRICT 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 DISTRICT Superior Court, Mendocino DISTRICT, 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 DISTRICT, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of DISTRICT 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 DISTRICT 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 DISTRICT 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, DISTRICT may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to DISTRICT, 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 DISTRICT'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 DISTRICT'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 or 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 DISTRICT, 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 DISTRICT 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 DISTRICT relating to a CONTRACTOR PRODUCT, CONTRACTOR shall indemnify and defend the DISTRICT 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 DISTRICT 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 DISTRICT

Contractor shall cooperate with DISTRICT and DISTRICT 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. DISTRICT 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 DISTRICT shall not operate as a waiver or release. If DISTRICT determines that any of Contractor's work is not in accordance with such level of competency and standard of care, DISTRICT, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with DISTRICT 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:

- (1) Attorney will provide legal assistance to the District based on her expertise in advising local air pollution control districts. Such services shall include advisement to the Air Pollution Control Officer, District Staff and the Air District Board on contracts, enforcement, compliance, planning and other issues relating to air quality management. Services shall include some time in the office of the District, as directed by the APCO, and may include attendance at meetings on behalf of the APCO or Staff at District Board meetings, meetings of the California Air Resources Board or other State Agencies, or the US EPA. This Contract does not include litigation services.
- (2) Compensation. Compensation to Attorney for services shall be at the rates set forth in Exhibit B, The rates set forth in Exhibit B shall not be adjusted without a formal amendment to this Agreement.
- (3) Term. The term of this Agreement shall commence upon execution and shall terminate on June 30, 2020.
- (4) Standard of Care. The District relies on the professional ability, professional experience, and training of Attorney as a material inducement to enter into this Agreement. Attorney warrants that all work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance by Agency of work performed by Attorney shall not operate as or be interpreted to be a waiver or release.

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

- (1)** District shall pay monthly to Attorney the amount of \$3,375. In exchange, attorney will provide up to 15 hours per month (\$225.00 per hour).
- (2)** Any charges for work over 15 hours in a given month shall be charged in addition to the amount above, at the rate of \$250 per hour.
- (3)** Compensation for services provided pursuant to the terms of this Agreement shall not exceed Forty Thousand, Five Hundred Dollars (40,500).
- (4)** Billing and Timekeeping. Billing statements shall be provided on a monthly basis, to the District APCO, and shall include the following information:
 - (a)** The date and time spent performing services. Minimum billing times shall not exceed 15 minutes.
 - (b)** Summary description of the services performed regarding the designated matter, with a separate time allocation for each function (e.g., telephone calls, research, drafting);
 - (c)** Separate itemization of non-legal costs by type.
 - (d)** For any extraordinary expenses, the invoice must include the date and documentation of prior approval for incurring such expense.
- (5)** Non-Reimbursable Services. Attorney shall not be reimbursed for any of the following expenses:
 - (a)** Normal overhead functions such as word processing or typing time, scheduling of depositions, ordering records, calendaring functions, filing, indexing, proofreading or copying time, or any other procedures that are of a secretarial nature.
 - (b)** Meals, overtime, or attorney time for preparation of bills or audit responses.
 - (c)** Expenses for experts or Attorneys that have been retained without the prior written approval of District.
 - (d)** Photocopying charges in excess of \$25.00 in any billing cycle without prior written approval of District.
 - (e)** Office supplies, local telephone charges, per-page fax charges, conference call line charges, routine mail, etc.
 - (f)** Replacement attorney learning time or other ramp-up learning costs.
 - (g)** Charges/fees for use of computer research programs (e.g. Lexis Nexis).
- (6)** Direction and Extraordinary Expenses. Attorney shall seek pre-approval from the District or its Representative for all extraordinary expenses before the same is incurred by Attorney. By way of example, extraordinary expenses shall include expenses for preparing complex enforcement actions, undertaking significant legal research or substantial drafting, retaining experts and Attorneys, and out-of-town travel that is beyond travel from place of work to District offices or meetings.
[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 DISTRICT 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 - \$2,000,000 each occurrence, \$4,000,000 in aggregate.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.
- c. Professional liability insurance of \$500,000 each occurrence, 1,000,000 in aggregate.

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

[END OF INSURANCE REQUIREMENTS]

EXHIBIT D

MENDOCINO DISTRICT EPAYABLES INFORMATION

The DISTRICT 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 DISTRICT 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 contact Margaret Yates yatesm@mendocinoDISTRICT.org or 707-234-6869.

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