

DEL NORTE LOCAL TRANSPORTATION COMMISSION
PROFESSIONAL SERVICES AGREEMENT WITH
[insert name of business]

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into and effective as of [insert date], ("Effective Date"), by and between the Del Norte Local Transportation Commission ("DNLTC") and [insert name of business] ("Consultant") (collectively, the "Parties").

WHEREAS, the Parties enter into this Agreement for the purpose of Consultant providing professional [insert type of services provided] services to DNLTC under the terms and conditions set forth in this Agreement.

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. Services. Consultant will provide the professional services as described in and in accordance with the Scope of Services and Fees set forth in Exhibit A, attached hereto and incorporated herein ("Services"). As needed by DNLTC, Services will be ordered by DNLTC by specifying the task to be performed ("Task Orders"). Task Order #1 is attached as Exhibit B. Additional Task Orders may be agreed to by the Parties and these must be numbered in series and will be set forth in similar format and attached to and become part of this Agreement.

2. Compensation.

For the full performance of the Services described in Exhibit A, DNLTC will compensate Consultant on a time-and-materials basis at the compensation rates specified in Consultant's Services Rate Schedule included in Exhibit A Total compensation .for the full performance by Consultant of all Services under all Task Orders must not exceed [insert amount written out] (\$[insert dollar amount]), the "not-to-exceed" amount. The Consultant agrees that the total compensation for services provided shall not exceed the agreed-upon not-to-exceed amount. The Consultant is required to fulfill all obligations and complete all Services under this Agreement and as specified in all agreed upon Task Orders, regardless of whether the not-to-exceed amount is reached before these Services are fully rendered, with no entitlement to further compensation beyond the not-to-exceed amount.

A. Consultant must submit detailed monthly invoices reflecting all services performed during the preceding month, including a revised or re-stated schedule for

performance and any additional documentation requested by DNLTC.

B. If DNLTC disputes a portion of a properly submitted invoice, it shall notify Consultant of the dispute and, upon Consultant's written request, arrange for a meeting to confer about, and potentially resolve, the dispute. Prior to this meeting, Consultant shall provide all documentation requested to support disputed portions of a properly submitted invoice. Regardless of any such dispute about an invoice or payment, Consultant shall continue to provide all Services required by this Agreement and by law until all Services are performed in compliance with all applicable Task Orders, even if DNLTC and Consultant cannot resolve all such disputes. Payments of undisputed portions of a properly submitted invoice shall be made within 60 days of receipt of the invoice; Consultant otherwise waives all rights and remedies under law related to receipt of payment of undisputed amounts.

C. Consultant will be compensated for services in addition to those described in Exhibit A, only if Consultant and DNLTC execute a written amendment to this Agreement describing the additional services to be performed and the compensation to be paid for those services. In no case will the total compensation under this Agreement exceed the "not-to-exceed" amount specified in Paragraph A, above, without prior written authorization from DNLTC.

D. DNLTC's obligation to pay compensation to Consultant is contingent upon Consultant's performance of the Services pursuant to the terms and conditions of this Agreement and any amendments. Before payment is disbursed, Consultant must be in compliance with Paragraph 19 of this Agreement.

3. Term. The term of this Agreement commences on the Effective Date, and terminates on [enter termination date – usually one year] unless sooner terminated in accordance with Section 4. Upon termination, any and all of DNLTC's documents or materials provided to Consultant and any and all of the documents or materials prepared for DNLTC or relating to or derived from the performance of the Services, must be delivered to DNLTC as soon as possible, but not later than fourteen (14) days after termination of the Agreement. There shall be no extension of the Agreement without express written consent of all parties.

4. This Agreement creates a non-exclusive and perpetual license for the DNLTC to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression or other writings prepared or caused to be prepared by the Consultant pursuant to this Agreement and all Task Orders. The Consultant shall require any and all subcontractors and consultants to agree in writing that the DNLTC is granted a similar non-exclusive and perpetual license for the work of

such subcontractors or consultants performed pursuant to this Agreement. All works created, designed, written, or otherwise produced by the Consultant in connection with the Services provided under this Agreement shall be considered 'work for hire.' Consequently, the Parties agree that DNLTC shall be deemed the sole author and owner of such works, with exclusive rights to all copyrights, trademarks, and other intellectual property rights therein.

5. Termination. DNLTC may terminate this Agreement without cause upon ten (10) days' written notice. DNLTC may immediately terminate or suspend this Agreement for cause. Cause for immediate termination or suspension includes, but is not be limited to, any breach of this Agreement by Consultant or Consultant's bankruptcy or insolvency. Upon receipt of notice of termination or suspension for cause, Consultant must immediately stop all work in progress under this Agreement unless otherwise directed by DNLTC. In the event of early termination of this Agreement by DNLTC, Consultant is entitled to payment for all Services performed to the date of termination to the extent the Services were performed to the satisfaction of DNLTC in accordance with the terms and conditions of this Agreement. If DNLTC terminates this Agreement for cause, Consultant is liable to DNLTC for any excess cost DNLTC incurs for completion of the Services.

6. Consultant's Representation; Independent Contractor. Consultant represents that Consultant possesses demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. DNLTC has relied upon that representation as a material inducement to enter into this Agreement. Consultant must, therefore, provide properly skilled and technical personnel to perform all Services. It is expressly understood that Consultant, its agents, and employees act in an independent capacity and as an independent contractor and not as officers, employees or agents of DNLTC. This Agreement may not be construed as an agreement for employment.

7. Facilities and Equipment. Consultant must, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing Services under this Agreement. DNLTC will furnish to Consultant no facilities or equipment, unless DNLTC otherwise agrees in writing to provide them.

8. Licenses, Permits, Etc. Consultant must, at Consultant's sole cost and expense, keep in effect and require its subcontractors, if any, to keep in effect at all times during the term of this Agreement any licenses, permits or other approvals that are legally required for performing the Services.

9. Time. Consultant will comply with DNLTC's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at DNLTC's request, must be supervised by Consultant. Consultant shall commit adequate resources to complete the Services consistent with any schedule or timelines specified in the applicable Task Order. Consultant will devote enough time to the performance of the Services as may be reasonably necessary for satisfactory performance of Consultant's obligations under this Agreement.

10. Inspection. Consultant must provide DNLTC every reasonable opportunity to ascertain that the Services are being performed in accordance with the requirements and intentions of this Agreement. All work done and materials furnished, if any, are subject to inspection and approval by DNLTC. The inspection of the work does not relieve Consultant of any of its obligations under this Agreement.

11. Progress Reports. Upon DNLTC's request, Consultant must provide, in a form acceptable to DNLTC, written progress reports of all oral and written observations, opinions, recommendations, analyses, progress and conclusions related to Consultant's performance of the Services.

12. Confidentiality. In the course of providing services for DNLTC, Consultant may have access to trade secrets and confidential information, disclosure of which is protected or limited by law. Consultant will not directly or indirectly disclose or use any confidential information, except as required for the performance of the Services.

13. Conflict of Interest. Consultant represents that it presently has no interest, and covenants that it will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services. Consultant further covenants that, in the performance of this Agreement, it will not employ any subcontractor or person having a conflict of interest. Consultant represents that no one who has or will have any financial interest under the Agreement is an officer or employee of DNLTC. If a conflict of interest arises during this Agreement or any extension, Consultant will immediately advise DNLTC and DNLTC may, at its sole discretion, immediately terminate this Agreement.

14. Consultant No Agent. Except as DNLTC may specify in writing, Consultant has no authority, express or implied, to act on behalf of DNLTC in any capacity whatsoever as an agent. Consultant has no authority, express or implied, under this Agreement to obligate DNLTC in any way.

14. Standard of Performance. Consultant must perform all the Services in a manner consistent with the standards of Consultant's profession. If there is no professional standard applicable to the Services, Consultant must perform in a manner consistent with the standards applicable to Consultant or the type of work. All instruments of service, as defined by the American Institute of Architects, that Consultant delivers to DNLTC under this Agreement, must be prepared to comply with and conform to the standards of Consultant's type of work. All instruments of service become the sole and exclusive property of DNLTC upon delivery.

15. Assignment/Transfer. Consultant will make no assignment or transfer in whole or in part of this Agreement without the prior written consent of DNLTC.

16. Subcontractors. Consultant must directly perform all Services, and may not subcontract any portion of performance of the Services without the prior written consent of DNLTC. Any approved subcontractors are required to comply, to the full extent applicable, with the terms and conditions of this Agreement. Upon execution of this Agreement, Consultant must furnish a separate schedule of names and addresses of subcontractors, if any, and must notify DNLTC in advance if changes in subcontractors occur.

17. Internal Revenue Service Form W-9. Consultant will provide an Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification, as required by DNLTC to comply with regulations of the United States Department of the Treasury. DNLTC's Finance Department will provide Consultant with the required form. Consultant must complete and file the form with DNLTC before any payment for Services may be made.

18. Business License. Consultant must file and require all its subcontractors to file, a Business License Application as required by the appropriate local government agency. Consultant must file and require all its subcontractors to complete and file the form with the appropriate local government agency and must pay or cause to be paid the business license fee before any payment for Services under this Agreement is rendered.

19. Compliance with All Laws. Consultant and any subcontractors must comply fully with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to performance of the Services, including the Americans with Disabilities Act and any copyright, patent or trademark law. To the extent that any other government agency or entity provides compensation for any Services, Consultant must comply with all rules and regulations applicable to that fiscal assistance. Consultant's failure to comply with any law(s) or regulations(s) applicable to the performance of the Services hereunder may be declared, at the discretion of DNLTC, a breach of contract.

These laws include, but are not limited to, the California Prevailing Wage Law; California Labor Code section 1720 et seq. Because the services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute public works within the definition of section 1720(a)(l) of the California Labor Code.

Therefore, the services described in Exhibit A must be performed in accordance with all applicable requirements of the California Prevailing Wage Law including, but not limited to, all applicable requirements contained in Exhibit C, which is attached to and made a part of this Agreement. To the extent that any other government agency or entity provides a source of funding for the DNLTC to compensate the Consultant for any services, Consultant must comply with all rules and regulations applicable to the fiscal assistance.

20. Non-Discrimination. During the performance of this Agreement, Consultant must

not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, ancestry, gender, sexual orientation, age or physical or mental disability in violation of any applicable law.

21. Notice. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement must be made in writing, and sent to the Parties at their respective addresses specified below or to any other address a Party may designate by written notice delivered to the other Party in accordance with this Section. All notices must be sent by:

- A. Personal delivery, in which case notice is effective upon delivery; or
- B. Certified or registered mail, return receipt requested, in which case notice will be deemed delivered on receipt if delivery is confirmed by a return receipt; or
- C. Nationally recognized overnight courier, or USPS Express or Priority Mail, with tracking, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
- D. Facsimile transmission, in which case notice is deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile is considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

DNLTC:

Tamera Leighton, Director
1301 Northcrest Drive #16
Crescent City, CA 95531
tamera@dnltc.org

Consultant:

[Consultant Name]
[Consultant Info Cont.]
[address]
[address]
[Fax info and/or email info]

22. Ownership of Documents. All records containing information produced as a result of this Agreement, including but not limited to hard copy documents, electronic information, voicemail recordings, videos, photos, or other medium, are the property of DNLTC and may not be used by Consultant without the written consent of DNLTC. Consultant will provide documents in electronic form in a format required by DNLTC. Copies of these documents or papers must not be disclosed to others without the written consent of the Director or their designated representative. DNLTC agrees to indemnify and hold Consultant harmless for claims resulting from DNLTC's alteration of the design drawings for another DNLTC project.

23. Internet-Ready Deliverables. If applicable to this Agreement, each contract deliverable must be delivered as a data file suitable for publication on the Internet. The following specifications define the formats that satisfy this requirement:

- A. Brochures, reports, plan documents, catalogues, flyers with graphics included, and forms are to be formatted as screen-optimized ".pdf " files, if possible.
- B. Freestanding, individual graphics such as logos, small maps and photos are to be formatted as ".tif " files, with the largest side no larger than four inches.
- C. Large maps are to be formatted as ".jpg" files with the largest side no larger than four inches, unless mutually agreed otherwise by the Parties.
- D. Short text documents with no graphics are to be in MS Word.
- E. Freestanding charts, graphs and listings are to be in MS Excel.

24. Indemnification. To the fullest extent allowed by law, Consultant will indemnify, defend with counsel acceptable to DNLTC, and hold harmless DNLTC and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, suits, actions, arbitrations proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of DNLTC.

The Consultant's obligation to defend and indemnify will not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within thirty (30) days to the tender of any claim for defense and indemnity by DNLTC, unless this time has been extended by DNLTC. If the Consultant fails to accept or reject a tender of defense and indemnity within thirty (30) days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as is necessary for DNLTC may be retained by DNLTC until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first. Furthermore, Consultant and Subcontractors' obligations to indemnify and defend DNLTC, as further outlined in section 25(h), are binding on their successors and assigns and will survive the termination or completion of this Agreement for the fullest extent and duration allowed by law. Consultant agrees that all contracts with subcontractors will include the same requirements stated in this Agreement with respect to indemnity and insurance.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the DNLTTC.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code section 2783, as may be amended from time to time, such duties of Consultant to indemnify will not apply when to do so would be prohibited by California Civil Code Section 2782.

Notwithstanding the foregoing, to the extent that this Agreement includes design professional services under Civil Code Section 2782.8, as may be amended from time to time, such duties of Consultant to indemnify will only be to the full extent permitted by Civil Code Section 2782.8.

The defense and indemnification obligations of this Agreement are undertaken in addition to, and will not in any way be limited by, the insurance obligations contained in this Agreement. If any term or portion of this section is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, said section will be interpreted to allow the broadest indemnity permitted by law.

25. Insurance. Consultant must procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, Consultant's agents, representatives and employees.

A. Minimum Scope of Insurance. Coverage must be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1(any auto), or code 8, 9 if no owned auto.
3. Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance. If no employees are utilized, the Consultant will provide a signed declaration as described in California Health and Safety Code Section 19825.
4. Professional liability insurance appropriate to the Consultant's profession. Consultants' and Engineers' coverage is to be endorsed to include contractual liability.

B. Minimum Limits of Insurance. Consultant will maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers ' Compensation: statutory limit; Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Professional liability: \$1,000,000 per occurrence or claim.

C. Umbrella or Excess Insurance. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance must contain or be endorsed to contain a provision that this coverage also apply on a primary and non-contributory basis for the benefit of DNLTC before DNLTC's insurance or self-insurance is called upon to protect it as a named insured.

D. Deductibles and Self-Insured Retention. Any deductibles or self-insured retentions must be declared to and approved by DNLTC and do not reduce the limits of liability. Policies containing any self-insured retention provision must provide or be endorsed to provide that the self-insured retention may be satisfied by either the named Insured or DNLTC. At the option of DNLTC, either: the insurer must reduce or eliminate the deductibles or self-insured retentions as respects DNLTC, its officers, officials, employees and volunteers, or the Consultant must provide a financial guarantee satisfactory to DNLTC guaranteeing payment of losses and related investigations, claim administration and defense expenses. DNLTC reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right does not constitute a waiver of right to so exercise later.

E. Other Insurance Provisions.

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

- a. DNLTC, its officers, officials, employees and volunteers (the "Additional Insureds") are to be covered as insureds as respects: liability

arising out of work or operations as performed by or on behalf of the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant.

b. For any claims related to this project, the Consultant's insurance coverage is primary insurance as respects DNLTC, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by DNLTC, its officers, officials, employees or volunteers is in excess of the Consultant's insurance and does not contribute with it. The Additional Insured coverage under the Consultant's policy must be at least as broad as ISO Form CG 20 01 04 13.

c. Each insurance policy required by this clause must be endorsed to state that coverage will not be canceled by either Party, unless thirty (30) days prior written notice by certified mail, return receipt requested, has been given to DNLTC.

2. The Workers' Compensation endorsement must contain a Waiver of Subrogation against DNLTC. The Consultant will provide to DNLTC an endorsement from the Workers' Compensation insurer, if any, agreeing to waive all rights of subrogation against DNLTC for injuries to employees of the Insured resulting from work for DNLTC.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise agreed to by DNLTC.

G. Verification of Coverage. Consultant must furnish DNLTC with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by DNLTC or on other than DNLTC's forms provided those endorsements conform to DNLTC's requirements. All certificates and endorsements are to be received and approved by DNLTC before work commences.

H. Subcontractors. Consultant must include all subcontractors as insureds under its policies or furnish separate certificates and endorsements for each subcontractor prior to commencement of subcontractor's work. Consultant agrees that all contracts with subcontractors will include the same requirements stated in this Agreement with respect to indemnity and insurance. Subcontractors hired by Consultant must agree to be bound contractually to Consultant and DNLTC in the same manner and to the same extent as Consultant is bound to DNLTC under this Agreement. Subcontractors must further agree to include these same provisions with any Sub-subcontractor. A copy of these indemnity and insurance provisions must be furnished by

Consultant to any subcontractor. The Consultant must require all subcontractors to provide a valid certificate of insurance and the required endorsements prior to commencement of any work by that subcontractor and Consultant will provide proof of compliance to DNLTC. If DNLTC is not furnished separate endorsements for each subcontractor prior to the commencement of subcontractor's work, then Consultant must include all subcontractors as insureds under its policies.

26. Amendment. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both Parties.

27. Litigation. If litigation ensues between DNLTC and a third-party, which pertains to the subject matter of Consultant's services hereunder, Consultant, upon request from DNLTC, agrees to testify therein at a reasonable and customary fee.

28. Construction. The Parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all Parties shall be treated as equally responsible for such ambiguity.

29. Governing Law; Venue. This Agreement must be enforced and interpreted under the laws of the State of California. Any action arising from or brought in connection with this Agreement must be venued in the Superior Court for the County of Del Norte, State of California.

30. Non-Waiver. DNLTC's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance is not a general waiver of any part of that provision. The provision will remain in full force and effect.

31. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement continue in full force and effect.

32. No Third-Party Beneficiaries. The Parties do not intend to create, and nothing in this Agreement creates, any benefit or right in any third party.

33. Mediation. The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties must mutually agree upon the mediator and divide the costs of mediation equally.

34. Consultant's Books and Records.

A. Consultant must maintain any and all ledgers, books of accounts, invoices,

vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to DNLTC for a minimum period of three (3) years or for any longer period required by law, from the date of final payment to Consultant under this Agreement.

B. Consultant must maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained under this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the Director or their designated representative. Copies of these documents will be provided to DNLTC when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records must be available at Consultant's address indicated for receipt of notices in this Agreement.

D. If DNLTC has reason to believe that records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, DNLTC may, by written request by the Director, require that custody of the records be given to DNLTC and that the records and documents be maintained by DNLTC. Access to these records and documents will be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor in interest.

35. Headings. The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.

36. Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between DNLTC and Consultant will survive the termination or completion of this Agreement.

37. Entire Agreement. This Agreement, including the exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the Services, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this document the day, month and year first above written.

DEL NORTE LOCAL TRANSPORTATION
COMMISSION:

By: _____
Tamera Leighton, Director

By: _____
[name], Chair

Approved as to form:

By: _____
[name], Attorney

CONSULTANT:

By: _____
[Consultant Contact Name & Title]
[Business Name]