

SAMPLE AGREEMENT FOR DESIGN PROFESSIONAL SERVICES

This agreement ("Agreement"), dated as of **DATE** ("Effective Date") is by and between the Great Redwood Trail Agency ("GRTA") and **CONTRACTOR NAME**, (hereinafter "Contractor").

R E C I T A L S

WHEREAS, Contractor is an experienced _____ in, **COUNTY NAME**, State of California; and

WHEREAS, Contractor has provided evidence of its qualifications for the above work in response to a competitive solicitation by GTRA, and pursuant to the terms of the solicitation has been selected on the basis of its qualifications and experience to perform certain work on behalf of GTRA; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1. Scope of Services.

1.1 Services to Be Performed. Contractor shall perform a full range of professional _____ services as requested by GRTA, from time to time, as GRTA in its sole discretion deems appropriate. All work shall be issued incrementally with a documented scope and budget in the form of a Task Order. writing. GRTA does not guarantee any minimum or maximum amount of work under this Agreement. Contractor shall receive compensation in the amount set forth by each Task Order and, to the extent applicable, according to the schedule of rates attached hereto and incorporated herein as Exhibit "A" by this reference (the "Fee Schedule") In the event of a conflict between the body of this Agreement and Exhibit "A", the provisions in the body of this Agreement shall control. Services shall be performed within specified times and dates pursuant to Article 7, Execution of Work.

1.2 Cooperation With GRTA. Contractor shall cooperate with GRTA and GRTA staff in the performance of all work hereunder.

1.3 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. 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 GRTA shall not operate as a waiver or release. If GRTA determines that any of Contractor's work is not in accordance with such level of competency and standard of care, GRTA, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with GRTA 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 Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel. Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time GRTA, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from GRTA. Any and all persons identified in this Agreement, any task order, or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by GRTA to be key personnel whose services were a material inducement to GRTA to enter into this Agreement, and without whose services GRTA would not have entered into this Agreement. Contractor shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of GRTA. In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.

2. Payment.

For all services and incidental costs required hereunder, Contractor shall be paid in accordance with the following terms:

For all services and incidental costs required hereunder, Contractor shall be paid on a time and material/expense basis as the parties may stipulate in the Task Order. Each Task Order shall set forth the payment structure for the services therein contemplated. Contractor shall submit its bills in arrears on a monthly basis in a form approved by GRTA. For the services performed on a time and materials/expense basis, bills shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed. Reimbursable expenses may include printing, postage, and travel as in any approved Task Order. Anticipated reimbursable expenses shall be included in the calculation of the not-to-exceed total of work in any approved Task Order. Unless otherwise noted in this Agreement, payments shall be made within the normal course of GRTA business after presentation of an invoice in a form approved by the GRTA for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the GRTA.

Unless otherwise noted in this Agreement, payments shall be made within the normal course of GRTA business after presentation of an invoice in a form approved by the GRTA for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the GRTA. Undisputed invoices will be paid within 45 days. Pursuant to California Revenue and Taxation code (R&TC) Section 18662, Contractor has provided GRTA with a completed Form 590.

3. Term of Agreement. The term of this Agreement shall be from the Effective Date through **CONTRACT END DATE** unless terminated earlier in accordance with the provisions of Article 4 below.

4. Termination.

4.1 Termination for Cause. Notwithstanding any other provision of this Agreement, should Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, GRTA may immediately terminate this Agreement by giving Contractor written notice of such termination, stating the reason for termination.

4.2 Termination without Cause. If at any time GRTA desires to terminate this contract, GRTA may immediately terminate this Agreement by giving Contractor written notice of such termination and directing Contractor to cease any further work hereunder.

4.3 Payment Upon Termination. Upon termination of this Agreement by GRTA, Contractor shall be entitled to receive full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder. If GRTA terminates this Agreement without cause pursuant to Section 4.2 hereof, Contractor shall additionally be entitled to payment at the rates set forth in Exhibit A for any additional work by Contractor to compile or analyze any information or data already collected by Contractor in order to make such information or data useable to GRTA. Prior to commencing such additional work, Contractor shall inform GRTA of the additional work required and provide an estimate of hours needed to complete such tasks.

5. Indemnification. For purposes of the following indemnification provisions, the phrases "design professional" and "design professional services" shall have the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Section 5 is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Section 5 and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Section 5 and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for GRTA under this Section 5 that is permitted by law shall be provided by Contractor.

5.1 Indemnification for Design Professional Services Claims. Contractor shall indemnify, defend and hold harmless GRTA, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of GRTA, or defect in a design furnished by GRTA, but in no event shall the amount of such Contractor's liability exceed such Contractor's proportionate percentage of fault as determined by a court, arbitrator or mediator, or as set out in a settlement agreement.

5.2 Indemnification for All Other Claims or Loss. For any claim, loss, injury, damage, expense or liability other than claims arising out of Contractor's performance of design professional services under this Agreement, Contractor shall indemnify, defend and hold harmless GRTA, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any

person or loss of use of or damage to property, arising from or related to the performance of services under this Agreement by Consultant, its employees, subcontractors, or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of GRTA, or defect in a design furnished by GRTA.

5.3 Indemnification Not Limited by Availability of Insurance; Survival. The obligations set forth in this Section 5 are not limited by any limitation on the amount, coverage or type of damages available under any applicable insurance policy held by Contractor and shall survive the expiration or early termination of this Agreement. conduct.

6. Insurance. With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, Contractors, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a Waiver of Insurance Requirements. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement. Great Redwood Trail Agency (“Agency”) reserves the right to review any and all of the required insurance policies and/or endorsements but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement. Contractor's indemnity and other obligations shall not be limited by the following insurance requirements. With respect to performance of work under this Agreement, Contractor shall maintain insurance as described hereinbelow.

6.1 Minimum Scope of Insurance. Coverage shall be at least as broad as:

- a. Insurance Services Office (“ISO”) Commercial General Liability coverage, occurrence basis (Form CG 00 01) or comparable. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Automobile Liability coverage: ISO Form Number CA 0001, Code 1 (any auto). Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance
- c. Workers’ Compensation insurance as required by the Labor Code of the State of California, and Employer’s Liability insurance. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Professional Liability/Errors and Omissions Insurance Minimum Limit: \$1,000,000 per claim or per occurrence.

Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$100,000 it must be approved in advance by GRTA. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work. Coverage

applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement

6.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.

6.3 Additional Terms.

- a. The contractor shall notify GRTA within two days of receipt of notice that any required insurance policy will lapse or be cancelled. At least ten days before an insurance policy held by the contractor lapses or is cancelled, contractor shall provide GRTA with evidence of renewal or replacement of the policy.
- b. Contractor hereby grants to the GRTA, its officers, agents, employees, and volunteers, a waiver of any right to subrogation which any insurer of the grantee may acquire against GRTA, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the grantee has received a waiver of subrogation endorsement from the insurer.
- c. The general liability and automobile liability policies must contain, or be endorsed to contain, the following provisions:
 - i. The GRTA, its officers, agents, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the grantee; and with respect to liability arising out of work or operations, including completed operations, performed by or on behalf of the grantee including materials, parts or equipment furnished in connection with the work or operations.
 - ii. For any claims related to this agreement, contractor insurance coverage shall be primary insurance as respects the GRTA.
 - iii. The limits of the additional insured coverage must equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by this agreement.

6.4 Acceptability of Insurers. Insurance shall be placed with insurers admitted to transact business in the State of California and having a current Best's rating of "B+:VII" or better or, in the alternative, acceptable to GRTA and approved in writing by the Executive Director.

6.5 Verification of Coverage. Contractor shall furnish GRTA with original certificates and amendatory endorsements, or copies of the applicable policy language, effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Executive Director before work commences. GRTA may require, at any time, complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

6.6 Contractors. Contractor shall include all contractors as insureds under its policies or shall require each contractor to provide and maintain coverage consistent with the requirements of this section. To the extent generally available, the contractor shall also require each professional contractor to provide and maintain Errors and Omissions Liability insurance appropriate to the contractor's profession and in a reasonable amount in light of the nature of the project.

6.7 Premiums and Assessments. GRTA is not responsible for premiums and assessments on any insurance policy.

7. Execution of Work. The execution of this Agreement and a task order hereunder shall constitute Contractor's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Contractor's performance of this Agreement shall be extended by a number of days equal to the number of days Contractor has been delayed.

8. Representations of Contractor.

8.1 Standard of Care. GRTA has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, including any applicable licensure or registration requirements, it being understood that acceptance of Contractor's work by GRTA shall not operate as a waiver or release.

8.2 Status of Contractor. The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of GRTA and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits GRTA provides its employees. In the event GRTA exercises its right to terminate this Agreement pursuant to Article 4, above, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

8.3 Records Maintenance. Contractor shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to GRTA for inspection at any reasonable time. Contractor shall maintain such records for a period of four (4) years following completion of work hereunder.

8.4 Conflict of Interest. Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder.

8.5 Nondiscrimination. Without limiting any other provision hereunder, Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion,

sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the GRTA's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

8.6 Ownership of Work Product. All reports, drawings, graphics, plans, and studies, in their final form and format, assembled or prepared by Contractor or Contractor's subcontractors, Contractors, and other agents in connection with this Agreement, shall be the property of GRTA. Contractor shall deliver such materials to GRTA upon request in their final form and format. Such materials shall be and will remain the property of GRTA without restriction or limitation. Document drafts, notes, and emails of the Contractor and Contractor's subcontractors, Contractors, and other agents shall remain the property of those persons or entities.

10. Prevailing Wages. Where work under a Task Order is subject to prevailing wage, the following terms will apply. Each Task Order under which prevailing wage applies shall so state within the Task Order, the Task Order shall state which types of work are subject thereto, and such Task Order shall be deemed the contract for such work for purposes of registration pursuant to the terms of Labor Code sections 1720 et seq. The general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract will be on file with the main office of GRTA, where applicable.

10.1 General. This contract is subject to prevailing wage. Contractor shall pay to persons performing work hereunder an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Agreement. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each site work is being performed.

10.2 Compliance Monitoring and Registration. This work specified above is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall furnish and shall require all subcontractors to furnish the records specified in Labor Code section 1776 (e.g. electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly (Labor Code 1771.4 (a)(3)). Contractor and all subcontractors performing work that requires payment of prevailing wages shall be registered and qualified to perform public work pursuant to Labor Code section 1725.5 as a condition to engage in the performance of any services under this Agreement.

10.3 Compliance with Law. In addition to the above, Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation Labor Code Sections 1725.5, 1775, 1776, 1777.5 1813 and 1815 and California Code of Regulations, Title 8, Section 16000, et seq.

11. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, subcontract, or transfer any interest in or duty under this Agreement without the prior written consent of the

other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

GRTA: Executive Director
Great Redwood Trail Agency
c/o Blue Lake City Hall
PO Box 458
Blue Lake, CA 95525
info@thegreatredwoodtrail.org

TO CONTRACTOR: Contractor Name
Business Name
Address
Address
Email

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.2 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the City of Santa Rosa, in the County of Sonoma.

13.3 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

13.4 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.5. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.6 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONTRACTOR:

GRTA:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A- Fee Schedule