

# **KONOCTI CORRIDOR VEHICLE MILES TRAVELED (VMT) STUDY**

## **Request for Proposal**

Prepared by:



Lake Area Planning Council  
525 South Main St., Suite B  
Ukiah, CA 95482

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*Attachment A – Sample Contract*  
*Attachment B – Protest Procedures*

## **I. Background**

### **A. Area Profile**

Lake County lies within the coastal range of mountains approximately 100 miles north of San Francisco and 35 miles east of the Pacific Ocean. It is bounded by Mendocino County on the west, Sonoma and Napa Counties to the south, and Yolo, Colusa and Glenn Counties on the east. State Highway 20 connects the area with both U.S. 101 and Interstate 5. The County's most prominent geographical feature is Clear Lake, which covers approximately five percent of the County's land area. Portions of Lake County include public lands managed by the Department of Forestry, Bureau of Land Management, State Parks Department and other agencies. The largest income producing industries are agriculture, tourism, and geothermal development located in the mountainous terrain in the southwestern portion of the county.

The California Department of Finance estimates Lake County's population at 63,940 as of January 1, 2021. This includes a population of 45,173 within the unincorporated area of the County, 4,774 within the City of Lakeport, and 13,993 within the City of Clearlake. The population typically increases during the summer months with the influx of tourists as well as seasonal residents and employees. It has been estimated that 20 to 25 percent of the existing houses in the County are second/vacation homes and are occupied for only part of the year. In addition, there are seven tribes in Lake County of which five have land and four have established casinos.

### **B. Organization and Management**

Transportation planning in Lake County is the responsibility of the Lake Area Planning Council (APC), the designated Regional Transportation Planning Agency (RTPA). Established in 1972, the Lake APC operates under a Joint Powers Agreement between local jurisdictions within the region. Three committees serve to advise the Lake APC. These are the Policy Advisory Committee (PAC), the Technical Advisory Committee (TAC), and the Social Services Transportation Advisory Council (SSTAC). The SSTAC was established in 1987 to assist the Lake APC in identifying transit needs that may be reasonable to meet by providing new or specialized public transportation services, or by expanding existing services.

### **C. Purpose**

The Lake Area Planning Council is soliciting proposals for the preparation of a Vehicle Miles Traveled (VMT) study for its interregional corridor system (referred to as the "Konocti Corridor") through the Lake County region. The study is intended as a reference document from which to calculate potential VMT and greenhouse gas (GHG) impacts in future improvement projects within the corridor.

## **II. Project Description**

The "Konocti Corridor" is a broad concept which refers to a list of interrelated and complementary projects improving use of the region's "Principal Arterial" route for both residents and interregional travelers. Ultimately, implementation of Konocti Corridor-related projects will result in improved safety, traffic flows, travel time reliability (for goods movement as well as interregional through traffic), reduced congestion, and increased options for multimodal travel. Realization of this concept will lead to consistent and sustained use of the preferred interregional route through the County (from east to west, State Route (SR) 20, SR 53,

SR 29, and returning to SR 20). The proposed project will analyze overall VMT and GHG impacts between scenarios ranging from current traffic patterns to expected future patterns once the concept has been fully realized.

### III. Scope of Work

#### A. Responsible Parties

The Lake Area Planning Council (APC) will be the lead agency for this project. A project Technical Advisory Group (TAG) (made up of representatives from Lake APC, the County of Lake, and Caltrans District 1) will be formed to assist with implementation. A transportation consultant will be procured through a competitive process to perform technical tasks under guidance of the TAG.

#### B. Project Tasks

##### **Task 1: Coordination with Project Partners & Consultant**

Task 1.1: Monthly Status Meetings: Lake APC, Consultant and Caltrans (project team) will hold monthly status meetings throughout the project.

Task 1.2: Technical Advisory Group: Form a Technical Advisory Group (TAG) to guide the project consisting of representatives from the Lake APC, the County of Lake, the cities of Clearlake and Lakeport, and Caltrans District 1.

Task 1.3: Consultant/TAG Kick-off Meeting: Consultant will conduct a kick-off meeting with Lake APC and TAG to share contact information, develop lines of communication, clarify objectives of the project, and resolve remaining issues.

Task 1.4: TAG Meetings: Consultant will conduct meetings with TAG, as needed, throughout the course of the study and prepare agendas and minutes for TAG meetings.

Project team and TAG meetings may be held virtually, via video and/or teleconference meetings. (May include travel costs if in-person activities allowed).

- **Responsible Party: Consultant & APC**

<i>Task</i>	<i>Deliverable</i>
<i>1.1</i>	<i>Monthly project team status meetings, agendas, meeting notes (Consultant); Travel Expenses</i>
<i>1.2</i>	<i>TAG roster</i>
<i>1.3</i>	<i>Consultant/TAG Kickoff Meeting Agenda and Meeting Notes (Consultant); Travel Expenses</i>
<i>1.4</i>	<i>Technical Advisory Group (TAG) roster; TAG meetings, TAG agendas and minutes (Consultant); Travel Expenses</i>

## Task 2: Data Collection

Task 2.1: Collect, Review, and Incorporate Relevant Data from Planning Documents: The consultant will conduct an initial review and analysis of relevant planning documents, including but not limited to the 2022 Regional Transportation Plan/Active Transportation Plan (RTP/ATP), County and City General Plans and Circulation Elements. Other corridor specific plans such as the Highway 20 Northshore Communities Traffic Calming Plan, SR 53 Corridor Study, and any recent Environmental Impact Reports (EIRs) shall also be reviewed for relevant concepts, policies, or data.

Task 2.2: Review Existing Travel Demand Models or other Relevant Sources: The consultant will conduct a review of existing data sources to generate current VMT data, record traffic counts by vehicle category, and make reasonable assumptions under different scenarios. At a minimum current traffic counts should be taken at the junctions of SR 20/53, SR 29/53, SR 29/20 for all types of vehicles. Reviewable data will likely include the Vehicle Miles Traveled Regional Baseline Study, the Wine Country Travel Demand Model for Lake County, and SR 53 Corridor Study. Current data may also be available through the Caltrans District 1 Office, which is presently working on a more focused Travel Demand Model for Lake and Mendocino counties. Additional sources could include commercially available big data (e.g. StreetLight, Insight, the California Statewide Travel Demand Model, the California Household Travel Survey, etc.) or others that are readily available, preferably at low or no cost.

Task 2.3: Examine Rural Case Studies: The consultant will review case studies in rural regions to identify VMT impacts resulting from capacity increases to the California State Highway System. Findings from this review will be compared with potential impacts related to the Lake 29 Improvement Project currently underway by Caltrans, with a focus on impacts to latent demand from the project.

Task 2.4: Develop Baseline VMT Data: Based on the review of the travel demand models and collected data in Task 2.2, as well as reviewing rural case studies in Task 2.3, the consultant will estimate and summarize interregional VMT data for current, mid-term, and long-range outcomes, with results to be reviewed by the TAG.

- **Responsible Party: Consultant (APC staff will assist with data collection and review all deliverables)**

<i>Task</i>	<i>Deliverable</i>
2.1 - 2.2	<i>List of plans and data reviewed (Consultant)</i>
2.3	<i>Rural Case Study Review (Consultant)</i>
2.4	<i>Data summary memo (Consultant)</i>

**Task 3: Development of Multi-Modal Build vs. No-Build Options (20 Yrs) Forecasting Tool**

Task 3.1: Review Existing Plans for Multi-Modal Improvements on Hwy 20 (Northshore):

Consultant shall review existing documents and plans for multi-modal improvements within the Northshore communities along State Route 20. This will include, but not be limited to, the Highway 20 Northshore Communities Traffic Calming Plan, and Caltrans District 1 proposed projects, including a Complete Streets project in the unincorporated community of Lucerne or others found in the State Highway Operations and Protection Program (SHOPP), Interregional Transportation Improvement Program (ITIP), or Active Transportation Program (ATP).

Task 3.2: Project Future Mode Shift Resulting from Multi-Modal Build vs. No-Build:

Based on findings from Task 3.1 and other modeling data, the consultant will evaluate potential mode shifts resulting from the traffic calming/complete streets improvements within the State Route 20 Northshore Communities, as well as concurrent projects proposed on the Principal Arterial Corridor (SR 53 and 29). An analysis shall be prepared and brought to the TAG for discussion and comment.

Task 3.3: Model VMT Changes/GHG Reductions with Future Multi-Modal Build vs. No-Build:

Similar to Task 3.2, the consultant will analyze the proposed improvements within the State Route 20 Northshore Communities along with Principal Arterial Corridor projects as a means of modeling potential changes in VMT and GHG emissions. Findings will be compared with current and projected traffic patterns in the region and an analysis shall be prepared and brought to the TAG for discussion and comment.

**Responsible Party: Consultant (APC staff will review the analyses provided by the consultant)**

<b>Task</b>	<b>Deliverable</b>
3.1	<i>List of Plans and Sources Regarding Multi-Modal Highway 20 Northshore/SR 53/SR 29 Improvements (Consultant)</i>
3.2	<i>Technical Memo regarding findings (Consultant)</i>
3.3	<i>Technical Memo regarding findings (Consultant)</i>

**Task 4: Draft and Final Reports**

Task 4.1: Prepare and Present Draft Report: The consultant will prepare a draft report for review and comment by the TAG.

Task 4.2: Prepare and Present Final Report: The consultant will incorporate the comments received on the draft report into the final report, as appropriate, and present it at a public meeting of the Lake Area Planning Council.

- **Responsible Party: Consultant**

<b>Task</b>	<b>Deliverable</b>
4.1	<i>Draft Report (Consultant)</i>
4.2	<i>Final Report; Presentation to APC (Consultant)</i>

**C. APC Acknowledgment**

The following acknowledgment of participation must appear on the cover or title page of a final report due to the Area Planning Council at the conclusion of this project:

"The preparation of this report was funded through the Lake Area Planning Council's 2021/22 Regional Transportation Planning Work Program, Work Element 603."

**IV. Proposal Requirements**

Each proposal shall contain at a minimum:

**A. Identification of Prospective Contractor**

The proposal shall include the name of the individual or firm submitting the proposal, its mailing address, telephone number, and the name of an individual to contact if further information is desired.

**B. Management**

The prospective contractor shall designate by name the project manager to be employed. The selected contractor shall not cause the substitution of the project manager without prior approval of the Lake Area Planning Council.

**C. Personnel**

The prospective contractor shall describe the qualifications of all professional personnel to be employed, including a summary of similar work or studies performed, a resume for each professional, a statement indicating how many hours each professional will be assigned to the contract and what tasks each professional will perform. The contractor shall not cause members of the project team to be substituted without prior approval of the Lake Area Planning Council.

**D. References**

The prospective contractor shall provide names, addresses, and telephone numbers for at least three clients for whom the prospective contractor has performed work similar to that proposed in this request. A summary statement for each assignment shall be provided.

**E. Subcontractors**

If subcontractors are to be used, the prospective contractor must submit a description of each person or firm and the work to be done by each subcontractor. The cost of the subcontract work is to be itemized in the cost proposal.

**F. Methodology**

The prospective contractor shall describe the overall approach to the project, specific techniques that will be used, and specific administrative and operations management expertise that will be employed.

**G. Schedule of Tasks**

The proposal shall contain a detailed schedule identifying major tasks to be undertaken to conduct the work and timeframe for each task. The schedule shall also identify all meetings, progress reports, deliverables, and the estimated staffing and hours to accomplish each task and deliverable. Preferred completion date of the project is May 31, 2023.

**H. Budget**

The prospective contractor shall prepare a detailed budget for the work to be performed. The budget shall itemize all items that will be charged to the project. Costs shall be segregated to show (by task) hours, and fully weighted rates, however, the methodology for calculating the fully weighted rates must be shown (e.g. overhead rate, fringe, etc.). The prospective contractor may not markup subcontracts. The breakdown of subcontract costs shall follow the same format as for the prime contractor. As discussed under Sections V. *Contract Arrangements* and VI. G. *Funding*, this project is subject to state and federal rules and procedures regarding contracting.

**I. Signature**

The proposal shall be transmitted with a cover letter that must be signed by an official authorized to bind the proposer contractually and shall contain a statement to the effect that the proposal is a firm offer for a 90-day period. The letter accompanying the technical proposal shall also provide the following: name, title, address, and telephone number of individuals with the authority to negotiate and contractually bind the contract.

**V. Contract Arrangements**

**A. Response Review**

Each response will be reviewed to determine if it meets the requirements contained in the Request for Proposals. Failure to meet the requirements for the Request for Proposals will be cause for rejection of the proposal.

Lake APC may reject any proposal if it is conditional, incomplete, or contains irregularities. Lake APC may waive an immaterial deviation in a proposal. Waiver of an immaterial deviation shall in no way modify the Request for Proposals documents or excuse the respondent from full compliance with the contract requirements if the proposer is awarded the contract.

**B. Response Evaluation**

Responses will be evaluated according to how well individual criteria have been met. In certain cases, follow up interviews may be requested prior to selection, although Lake APC reserves the right to select a consultant based solely on written proposals. In the event of an interview, a separate score (from 1-20) will be used to rank oral responses, which will be judged according to project understanding and approach. Overall, evaluation will focus on the comprehensive nature of the proposal (thoroughness of responses, knowledge of local conditions, etc.) and will be based on the following criteria:



<u>Criterion</u>	<u>Weight</u>
1. Approach to tasks and duties (scope)	30%
2. Cost of proposal, including budget/resource allocation	30%
3. Experience relevant to tasks and duties	20%
4. Qualifications, Education and training	10%
5. General Experience	10%

**C. Contract Award**

A contract will be negotiated with the individual or firm determined in the evaluation process to be best suited to perform this project. Lake APC is expected to award a contract by **August 5, 2022.**

If a contract cannot be negotiated with the individual or firm submitting the highest rated response which is in the best interests of the Lake APC, then staff shall commence the negotiation process with the individual or firm submitting the second highest rated response. The contract will include all State and/or Federal requirements that “flow down” from the grant. An example of language that may be included in a contract is attached as Attachment A.

**VI. General Information**

**A. Proposal Submittal**

Responses must be received by no later than **4:00 p.m. on July 22, 2022.** Five (5) bound copies of the response and one (1) electronic copy on CD or flash drive shall be furnished. Responses may be either mailed or hand delivered to:

Lisa Davey-Bates, Executive Director  
 Lake Area Planning Council (APC)  
 Davey-Bates Consulting  
 525 South Main Street, Suite G  
 Ukiah, CA 95482

**B. Late Submittals**

Responses received after the specified time will not be considered and will be returned, unopened, to the respondent.

**C. Modification or Withdrawal of Responses**

Any response received prior to the date and time specified above for receipt of responses may be withdrawn or modified by written request of the proposer. To be considered, however, the modified response must be received by the date and time specified above.

**D. Schedule**

The schedule of activities related to this contract is as follows:

<u>Activity</u>	<u>Date</u>
RFP Mail-out	June 20, 2022
Written Question Submittal Deadline	July 13, 2022
Response to Written Questions	July 15, 2022

Proposal Submittal Deadline	July 22, 2022
Interview (if needed)	August 2, 2022
Tentative Contract Award	August 12, 2022
Tentative Contract Effective Date	August 19, 2022

**E. Property Rights**

Responses received within the prescribed deadline become the property of Lake APC and all rights to the contents therein become those of Lake APC.

**F. Amendments to Request for Proposals**

Lake APC reserves the right to amend the Request for Proposals by addendum prior to the final date of response submission.

**G. Funding**

Available funding for the project is approximately **\$100,000**. The source of funding is from the region’s Local Transportation Funds as budgeted by the Lake Area Planning Council in the 2021/22 Regional Transportation Planning Work Program. Rules and procedures dictated by Caltrans regarding per diem rates, reimbursement levels for lodging, meals, and travel will apply to this project. Ten percent (10%) of each of the prime contractors’ invoices will be retained by the APC. This retention shall be released to the Consultant upon acceptance by the APC of the completed work and final report.

**H. Non-commitment of the Lake APC**

This Request for Proposals does not commit Lake APC to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for services or supplies. Lake APC reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified individual or firm, or to modify or cancel in part or in its entirety the Request for Proposals if it is in the best interest of the agency to do so.

**I. Public Domain**

All products used or developed in the execution of any contract resulting from this request will remain in the public domain at the completion of the contract.

**J. Questions**

Questions regarding this Request for Proposals **MUST be submitted IN WRITING**. Written questions should include the individual’s name, the name of the firm (if applicable), address, telephone number, and e-mail. Questions must be submitted by **Wednesday, July 13, 2022, at 5:00 p.m.**

Questions should be directed to:

John Speka  
 Lake Area Planning Council  
 525 S. Main St, Ste. B  
 Ukiah, CA 95482  
 E-mail: [spekaj@dow-associates.com](mailto:spekaj@dow-associates.com)  
 Telephone (707) 263-7799

Questions and answers will be provided in the form of an addendum to this RFP, and will be posted by **July 15, 2022**, on Lake APC's website <http://www.lakeapc.org/>.

**K. Conflict of Interest**

No consultant, subcontractor, or member of any firm proposed to be employed in the preparation of this project has a past, ongoing, or potential involvement which could be deemed a conflict of interest under the Fair Political Practices Act or other law. During the term of this Agreement, the consultant shall not accept any employment or engage in any consulting work that would create a conflict of interest with Lake APC or in any way compromise the services to be performed under this Agreement. The consultant shall immediately notify Lake APC of any and all potential violations of this paragraph upon becoming aware of the potential violation.

**L. Affirmative Action**

Prospective contractors should be aware that the Equal Employment Opportunity Requirement of Executive Order 11246, as amended by Executive Order 11275, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment Practices Act and other federal and state laws pertaining to equal employment opportunity are applicable to any contract awarded by Lake APC.

**M. Protest Procedures and Dispute Resolution Process**

The Lake APC's "Protest Procedures and Dispute Resolution Process" shall be utilized to resolve and protests or disputes to this procurement process (*see Attachment B*).

# LAKE COUNTY/CITY AREA PLANNING COUNCIL

## AGREEMENT FOR PROFESSIONAL SERVICES

### PROJECT NAME

This Agreement is entered into on xxxxxx, 201x, by and between the Lake County/City Area Planning Council, hereinafter referred to as the "APC", and (Consultant Name), hereinafter referred to as "Consultant."

#### RECITALS:

The APC may retain independent contractors to perform special, technical, expert, or professional services. Consultant is equipped, staffed, licensed, and prepared to provide such services.

The APC is lead agency for Project Name in Lake County, hereinafter referred to as the "Project," funded by Funding Source and amount(s) from the State of California, Department of Transportation, hereinafter referred to as the "State." The APC shall be responsible to State for the successful completion of this Project.

All services performed by APC, Consultant and any sub-consultants pursuant to this Agreement are intended to be performed in accordance with all applicable Federal, State, and County of Lake laws, ordinances, regulations, and Caltrans' published manuals, including the approved grant application. In case of conflict between Federal, State and County of Lake laws, ordinances, or regulations, the order of precedence for applicability of these laws shall be Federal, State and County of Lake laws and regulations, respectively.

The APC and Consultant agree as follows:

#### 1. WORK TO BE PERFORMED

Consultant agrees to provide those services, tasks and products detailed in attachments, incorporated herein by reference. Professional services described in Exhibits A and B may be refined or amended by agreement of the APC and Consultant.

Exhibit A: Consultant's Proposal to xxxxxx

Exhibit B: Project grant application with the scope of work and the project schedule used in the formal procurement process.

Consultant agrees to perform any additional services as may be required due to significant changes in general scope of the project or its design, including but not limited to change in size, complexity, or character. Such additional services shall be paid for by Amendment to this Agreement or by a Supplemental Agreement and shall conform to the rates of payment specified in Section 2 hereof.

#### 2. COMPENSATION

Compensation for services provided shall not exceed \$xx,xxx on a job completion basis. This shall include compensation for completing the tasks and products identified in Exhibits A and B. Cost overruns and/or failure to perform within the limits of the proposed budget shall not relieve Consultant of responsibility to provide those tasks and products specified in the Exhibits.

The APC shall pay Consultant for work required for satisfactory completion of this Agreement according to the process in Section 3 below. The basis for payment for services shall be on an hourly rate plus non-salary expenses, in accordance with Consultant's Cost Proposal, as attached hereto and made a part hereof in Exhibit A.

### 3. INVOICES AND DISBURSEMENT

The APC will pay Consultant no more than every thirty (30) days based on itemized invoices for work completed, including documentation of any direct costs. Costs shall be shown to reflect hourly billing rates for all staff. Monthly invoices shall be accompanied by a brief summary of progress to date, segregated by task. Sub-consultant invoices shall also include narrative of work completed as well as detailed receipts of any direct expenses. Consultant mark-up of direct expenses or of subcontractor invoices are not allowable, therefore APC will not pay Consultant for any such increases to actual costs incurred.

The APC shall review invoices and may approve them for payment or adjust them after consultation with Consultant. Total progress payments for each task shall not exceed 100% of the budget for each major task as shown in Exhibits A and B. The APC will make payments within 30 days of receipt of Consultant's invoices.

The APC shall hold retainage of ten (10%) percent of each invoice. This retention shall be released to Consultant within 30-days after receiving final work products deemed satisfactorily completed by APC.

Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Personnel Administration. For more information, refer to: <http://www.dot.ca.gov/hq/asc/travel/ch12/1consultant.htm>

If the APC substantially alters the scope of work, the maximum fee may be changed by Supplemental Agreement or an Amendment signed by both the APC and Consultant.

### 4. REPORTS

Due dates and milestones are detailed in Exhibit A. Preparation of deliverable work products detailed in Exhibits A and B shall be in formats acceptable to the APC. The APC will provide Consultant with guidance on acceptable formats. Consultant shall bear the expense of all printing and reproduction costs of the deliverables, until the final deliverables are accepted by the APC.

### 5. SERVICES OF THE LAKE COUNTY/CITY AREA PLANNING COUNCIL

The APC shall provide full information as to its requirements for performance of this Agreement, attached as Exhibit B.

The APC shall provide program guidance and appropriate monitoring of work task performance under this Agreement. The APC shall place at the disposal of Consultant all available information pertinent to the project.

The APC will examine all studies, reports, or other submittals from Consultant and will make every effort to provide comments pertaining thereto within ten (10) calendar days of receipt.

## 6. TERM OF AGREEMENT

The term of this Agreement shall be from xxxxxx, 201x through xxxxxx, 201x. Execution of this Agreement by the APC shall constitute Consultant's authority to proceed immediately with the performance of the work described by Exhibits A and B, provided that evidence of insurance has been received by the APC as specified under Section 11 below.

All work by Consultant shall be completed and all deliverables submitted to and in the possession of the APC by xxxxxx, 201x. Extensions of the above term may be made only upon written authorization by the APC.

Consultant acknowledges that timely performance of services is an important element of this Agreement and will perform services in a timely manner consistent with sound professional practices.

## 7. PROJECT INSPECTION AND ACCOUNTING RECORDS

APC, Consultant and all subcontractors shall maintain all source documents, accounting records, and other supporting papers connected with performance of work under this Agreement for a minimum of three (3) years from the date of final payment, or until annual audit resolution is achieved, whichever is later. All such supporting information shall be made available for inspection and audit by representatives of State of California Department of Transportation (State), the California State Auditor, and auditors representing the federal government. Copies will be made and furnished by APC upon request, at no cost to State.

## 8. OWNERSHIP OF FINAL REPORTS AND PRODUCTS:

All original reports and documents together with such backup data as required by this Agreement shall be and shall remain the property of the APC and State.

Consultant is advised that, according to Government Code Section 7550, which states in part that *“Any documents or written reports prepared as a requirement of this contract shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of those documents or reports if the total cost for work by non-employees of the public agency exceeds \$5,000.”*

## 9. TERMINATION

At any time the APC may suspend indefinitely or abandon the project, or any part thereof, and may require Consultant to suspend the performance of its services. In the event the APC abandons or suspends the project, Consultant shall receive compensation for services rendered to date of abandonment and suspension in accordance with the provisions of Sections 2 and 3 herein.

It is understood and agreed that should the APC determine that any part of the work involved in the program is to be suspended indefinitely, abandoned, or canceled, this Agreement shall be amended accordingly. Such abandonment or cancellation of a portion of the program shall in no way void or invalidate this Agreement as it applies to any remaining portion of the project.

If, in the opinion of the APC, Consultant fails to perform or provide prompt, efficient and thorough service, or if Consultant fails to complete the work within the time limits provided, the APC shall have the right to give notice in writing to Consultant of its intention to terminate this Agreement. The notice shall be delivered to Consultant at least seven (7) days prior to the date of termination specified in the notice. Upon such termination the APC shall have the right to take Consultant's studies, and reports insofar as they are complete and acceptable to the APC and pay Consultant for its performance rendered, in accordance with Sections 2 and 3 herein, prior to delivery of the notice of intent to terminate, less the amount of damages, general or consequential, if any, sustained by the APC due to the breach of this Agreement by Consultant. Said termination of the Agreement shall not relieve Consultant of its liability to the APC for any damages, general or consequential, which the APC may sustain as a result of Consultant's failure to satisfactorily perform its obligations under this Agreement.

#### 10. RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Consultant shall indemnify and hold harmless the APC and its agents and officers against and from any and all claims, lawsuits, actions, liability, damages, losses, expenses, and costs (including but not limited to attorney's fees), brought for, or on account of, injuries to or death of any person or persons including employees of Consultant, or injuries to or destruction of property including the loss of use thereof, arising out of, or resulting from, the performance of the work described herein, provided that any such claim, lawsuit, action, liability, damage, loss, expense, or cost is caused in whole or in part by any negligent or intentional act or omission of the Consultant, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Where Consultant is found to have caused the injury, damage, or loss only in part, Consultant shall hold the APC harmless only to the extent Consultant caused the injury, damage, or loss. The APC agrees to timely notify Consultant of any such negligence claim and to cooperate with Consultant to allow Consultant to defend such a claim.

The APC shall indemnify and hold harmless Consultant, its officers, agents, and employees from any and all claims, suits, losses, damages, costs (including reasonable attorney's fees) and demands, pure economic damages, administrative fees, penalties and fines imposed, and demands, including reasonable attorney's fees connected therewith, on account of personal injury, including death, or property damage, sustained by any person or entity not a party to this Agreement between Consultant and the APC and arising out of the performance of such Agreement to the extent such injury, death or damage is caused by the negligence or willful misconduct of the APC or its contractors or their respective employees, officers and agents.

The APC agrees to the full extent permitted by law, to indemnify, defend, and hold harmless Consultant, its officers, directors, shareholders, employees, affiliates, and subsidiaries and their successors from and against any and all claims, demands, losses, penalties, fines and causes of action of every kind and character (including reasonable attorney fees) arising from or relating to Pre-existing Conditions.

## 11. INSURANCE

Consultant, at its expense, shall secure and maintain at all times during the entire period of performance of this Agreement, insurance as set forth herein with insurance companies acceptable to the APC for the APC's protection, its elected or appointed officials, employees and volunteers, Consultant and any other independent contractor from any and all claims which may arise from operations under this Agreement, whether operations be by Consultant, by another independent contractor, or by anyone directly or indirectly employed by either of them.

Consultant shall provide to the APC Certificates of Insurance evidencing minimum coverage as specified below:

Vehicle/Bodily Injury - \$250,000 Each Person, \$500,000  
Each Occurrence and Vehicle/Property Damage - \$250,000  
Each Occurrence

OR

Combined Single Limit Vehicle Bodily Injury and Property  
Damage Liability - \$1,000,000 Each Occurrence

AND

General Liability - \$1,000,000 per Occurrence for Bodily  
Injury, Personal Injury and Property Damage

AND

Worker's Compensation and Employer's Liability: Limits  
as required by the labor code of the State of California.

In the event of breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the APC, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend further work pursuant to this Agreement.

Consultant shall not commence work, nor shall it allow its employees or subcontractors or anyone to commence work contemplated through this Agreement until all insurance required hereunder has been submitted to and accepted by the APC. Failure to submit proof of insurance as required herein may result in awarding said Agreement to another bidder.



Insurance coverage in a minimum amount set forth herein shall not be construed to relieve Consultant for liability in excess of such coverage, nor shall it preclude the APC from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law.

Before beginning the work, the Consultant shall furnish to the APC satisfactory proof that it has secured, for the period covered under this Agreement, Workers Compensation Insurance for all persons whom it may employ in carrying out the work completed under this Agreement, in accordance with the "Workers Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any acts amendatory thereof. Such insurance shall be maintained in full force and effect during the period covered by this Agreement.

The Consultant shall sign and file with the APC a Workers Compensation Certificate prior to performing any work. Consultant shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of subcontractor's employees.

## 12. STANDARD OF CARE

The absence, omission, or failure to include in this Agreement items which are considered to be a part of normal procedures for work of this type or which involve professional judgment shall not be used as a basis for submission of inadequate work or incomplete performance.

The APC relies upon the professional ability and stated experience of Consultant as a material inducement to entering into this Agreement. Consultant understands the use to which the APC will put its work product and hereby warrants that all findings, recommendations, studies and reports shall be made and prepared in accordance with generally accepted professional practices.

Consultant will comply with all Federal, State and Local laws and ordinances as may be applicable to the performance of work under this Agreement.

## 13. STATE AND FEDERAL REQUIREMENTS

Non-Discrimination Clause. a.) In the performance of work under this Agreement, APC, Consultant and its sub-consultants shall not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family and medical care leave and denial of pregnancy disability leave. b.) APC, Consultant and its sub-consultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. APC, Consultant and its sub-consultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made part hereof as if set forth in full. c.) APC, Consultant and

its sub-consultants shall each give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other labor agreement. d.) APC, Consultant and its sub-consultants will permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by State to investigate compliance with this section.

Disadvantaged Business Enterprise (DBE) Obligation. APC, Consultant and its sub-consultants shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Title VI of the Civil Rights Act of 1964. The consultant agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964, California Civil Code section 51(b) and the regulations of the U.S. Department of Transportation issued thereunder in 49 CFR Part 21.

Equal Employment Opportunity. In connection with the performance of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

Cost Principles. APC, Consultant and its sub-consultants will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual Project cost items and (b) all parties shall comply with Federal administrative procedures in accordance with Title 2, CFR, Part 200, Uniform Administrative Requirements, Cost Administrative Requirements for Federal Awards, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable. For more information, refer to: <http://www.gpoaccess.gov/nara/index.html>.

Record Retention and Audits. APC, Consultant and its sub-consultants shall maintain all source documents, accounting records, and other supporting papers connected with performance of work under this Agreement for a minimum of three (3) years from the date of final payment, or until annual audit resolution is achieved, whichever is later. All such supporting information shall be made available for inspection and audit by representatives of State of California Department of Transportation (State), the California State Auditor, and auditors representing the federal government. Copies will be made and furnished by APC upon request, at no cost to State.

APC, Consultant and its sub-consultants shall each establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP), to support invoices and requests for reimbursement that segregate and accumulate project costs by line item, and can produce interim (quarterly) reports that clearly identify reimbursable costs and

other expenditures for the project.

#### 14. COMPLIANCE

Consultant, in the conduct of the services contemplated within this agreement, shall comply with all statutes, State or Federal, and all ordinances, rules and regulations enacted or issued by the County of Lake.

#### 15. INDEPENDENT CONSULTANT

Both the APC and Consultant agree and acknowledge that the relationship between them is that of public entity and independent contractor and shall in no event be considered that of employer/employee. The APC shall compensate Consultant by payment of the gross amounts due to Consultant, and Consultant shall be solely responsible for any federal, state, and local taxes and withholdings that may be applicable.

#### 16. FINANCIAL INTEREST

The Consultant covenants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed or subcontracted.

#### 17. SUCCESSOR AND ASSIGNMENTS

The APC and Consultant each binds itself, its partners, successors, and executors, administrators, and assigns to the other party to this Agreement, and to the partners, successors, executors, administrators and assigns of such party in respect to all covenants of this Agreement.

Except as noted above, neither the APC nor Consultant shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other, however, Consultant reserves the right to assign the proceeds due under this Agreement to any bank or person.

In the case of death of one or more members of the firm of Consultant, the surviving member or members shall complete the professional services covered by this Agreement.

#### 18. NOTICES

Notices pursuant to this Agreement shall be served via registered United States mail, or when personally delivered as follows:

Lisa Davey-Bates, Executive Director  
Lake County/City Area Planning Council  
525 S. Main St., Suite G  
Ukiah, CA 95482

#### 19. VENUE

The venue for this agreement shall be Lake County, California.

20. EXTENT OF AGREEMENT:

This Agreement and all exhibits made a part hereof constitute the entire Agreement between the parties. In case of conflict or inconsistency between this Agreement and any exhibits, this Agreement shall control. This Agreement shall not be modified except by written agreement of both parties.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this Agreement in duplicate as of the day and year first written above.

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Lisa Davey-Bates, Executive Director  
Lake County/City Area Planning Council

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Consultant Name, Position  
Firm Name, LLC

Federal ID No.: \_\_\_\_\_

SAMPLE

## PROTEST PROCEDURES FOR PROCUREMENTS\*

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### I. PROTESTS

The following procedures shall be used by RTPA to fairly and promptly respond to any protests received regarding third-party contracts or the contracting process. RTPA will consider all protests or objections regarding the contracting process or the award of an Agreement received by RTPA by 4 p.m. on the deadlines discussed below. RTPA will review only protests submitted by an actual or prospective Proposer. Protests by prospective subcontractors will be rejected. A protest by any adversely affected Proposer must be made in writing and must be mailed or hand delivered to RTPA. A protest which does not strictly comply with the RTPA protest procedures will be rejected.

#### A. Protests Before Bid/Proposal Opening

Protests relating to the content of the solicitation (i.e., RFP, IFB, RFQ), including protests related to DBE/UDBE requirements, must be filed within five (5) business days after the date the solicitation or addendum with the revised content is released to the public by RTPA. Failure to file a protest concerning the content of the solicitation or addendum prior to this deadline constitutes a waiver of any protest on these grounds.

#### B. Protests Related to Determination of Responsiveness

In the event the RFP contains a DBE/UDBE goal and RTPA makes a determination that Proposer has not met the goal or good faith effort requirements set forth in this RFP, RTPA will send the Proposer a Notice of Non-Responsiveness. Protests relating to any Notice of Non-Responsiveness must be filed within five (5) business days after the date of such notice. Failure to file a protest concerning the non-responsiveness determination prior to this deadline constitutes a waiver of any protest on these grounds and RTPA shall not be obligated to send Proposer any further notices.

#### C. Protests After Bid/Proposal Due Date

After Proposers are shortlisted and/or selected for negotiations, notices will be sent to all relevant Proposers. Protests relating to failure to make the shortlist must be filed within five (5) business days following protester's receipt of a notice regarding the shortlisting. Protests relating to the intent to make an award must be filed within five (5) business days following protester's receipt of the notice regarding the intent to negotiate. The date of filing shall be the date RTPA receives the protest. Untimely protests will be rejected. If deemed necessary, RTPA shall notify all Proposers of record that a protest has been filed and the award has been postponed until further notice. If necessary, Proposers will be asked to extend the time for acceptance of their proposal in order to avoid the need for readvertisement of the solicitation.

#### **D. Protest Contents**

A letter of protest must set forth detailed grounds for the protest and be fully supported with technical data, documentary evidence, names of witnesses, and other pertinent information related to the subject being protested. The protest also must state the law, rule, regulation, or policy upon which the protest is based. Protests concerning the relative weight of the evaluation criteria or the formula used in assigning points to make an award determination will be rejected. The protester must allege or establish a clear violation of a specific law, rule, regulation, or policy. If the protester considers that the protest contains proprietary material that should be withheld, a statement advising of this fact must be affixed to the front page of the protest document, and alleged proprietary information shall be so identified wherever it appears. Protests shall be mailed to:

The Protest Administrator

Reference: RTPA Contract Solicitation No. Solicitation #

#### **E. Role Of The Protest Administrator**

If a protest raises solely a question of law, the Executive Director shall retain the services of RTPA legal Counsel to serve as the Protest Committee. RTPA Legal Counsel will prepare a recommendation regarding the protest, in writing, to the RTPA Executive Director within ten (10) business days.

The Protest Administrator shall review each protest to determine if it is in compliance with the deadline, format, content, and notice requirements set forth in this Section. If a protest does not meet such requirements it may be rejected without further consideration. A written notice of such rejection shall be sent to the protester.

If the protest requires resolution of questions of fact, the Protest Administrator, his/her designee will appoint individuals to participate on a Protest Committee. The Protest Administrator will endeavor to appoint at least one of the Protest Committee members from an outside agency, and no one may sit on the Protest Committee that has a known and direct connection to the procurement that is the subject of the protest. The Protest Administrator also will appoint a chairperson for the Protest Committee. The Protest Administrator will gather the documents that the Protest Committee will need for its investigation and prepare a memo to the Protest Committee containing background information regarding the protest. Any communication regarding the protest between the protester and RTPA shall be through the Protest Administrator during the protest proceedings. Protesters may not contact anyone at RTPA other than the Protest Administrator. Protest Committee

The Protest Committee shall ensure the protest was received within the timeline specified and review the protest to determine if it itemizes in appropriate detail each matter contested as well as any factual reason(s) for the requested protest. The Committee chairperson shall schedule the date of the Protest Committee meeting, contact the Committee panel members, and distribute all protest documentation.

#### **F. Reply To Protest**

The Protest Committee will review all qualifying protests in a timely manner and may hold an informal hearing if deemed necessary in order to complete its investigation. The Protest Committee will prepare a recommendation regarding the protest, in writing, to RTPA's Executive Director within ten (10) business days of the date of receipt of the protest. All materials included with the

original protest at time of submittal will be considered. Supplemental materials filed by a protester after the protest deadline will not be considered unless there are extenuating circumstances in the opinion of the Protest Committee. Protest documents will not be withheld from any interested party outside of RTPA, with the exception that information will be withheld when required by law or regulation. The Executive Director or his/her designee will either sustain or reject the protest in writing based upon the recommendation of the Protest Committee and the best interests of RTPA. This decision will be communicated in writing to the protestor and/or the party whose proposal is the subject of the protest and delivered by email or overnight delivery.

#### **G. Results Of The Protest**

If the protest relating to a contract award is sustained, the original Notice of Intent to Award may be withdrawn after the deadline for protest reconsideration has passed. RTPA then may issue a new Notice of Intent to Award to a different bidder/Proposer and a new protest period will commence using the same timelines discussed above. If the protest is rejected, the original Notice of Intent to Award will stand and RTPA will continue with contract negotiations with the awardee.

#### **H. Federal Transit Administration Requirements Not Applicable in the absence of FTA Funding**

##### 1. FTA Review of Protests

- a. In the case of contracts funded by the FTA, the FTA will review only protests regarding the alleged failure of RTPA to have written protest procedures or alleged failure to follow such procedures.
- b. Alleged violations on other grounds are under the jurisdiction of the appropriate state or local administrative or judicial authorities. Alleged violations of a specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation. See Buy America Requirements, 49 C.F.R. 661.15; Participation by Minority Business Enterprise in DOT Programs, 49 C.F.R. 26.
- c. The FTA will review only protests submitted by an interested party defined as an actual or prospective bidder or Proposer whose direct economic interest would be affected by the award of the contract or by failure to award the contract in accordance with FTA Circular 4220.1F. A subcontractor does not qualify as an “interested party.” (See FTA Circular 4220.1E, Chapter VII, Section I (1)(c)).”

##### 2. Time for Filing

- a. Protesters shall file a protest with the FTA not later than five (5) business days after a final decision is rendered under the RTPA protest procedure. A copy of any protest documents filed with the FTA must be provided concurrently to RTPA. In instances where the protester alleges that RTPA failed to make a final determination on the protest, protesters shall file a protest with the FTA not later than five (5) business days after the protester knew or should have known of the failure of RTPA to render a final determination on the protest.
- b. RTPA shall not award a contract for five (5) business days following its decision on a bid protest except in accordance with the provisions and limitations of subparagraph 6.

After five (5) business days, RTPA shall confirm with the FTA that the FTA has not received a protest on the contract in question.

3. Submission of Protest to the FTA

- a. The protester must exhaust its administrative remedies by pursuing the recipient's protest procedures to completion before appealing the recipient's decision to the FTA. (FTA Circular 4220.1F, Page VII-3, November 1, 2008).
- b. Protests should be filed with the FTA Region 9 office and a copy must be sent to RTPA by the protester.
- c. The protest filed with the FTA shall:
  - Include name and address of protester
  - Identify RTPA as the grantee, the RTPA Contract Administrator, and number of the contract solicitation
  - Contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures and be fully supported to the extent possible
  - Include a copy of the local protest filed with RTPA and a copy of the RTPA decision, if any

4. RTPA Response

- a. The FTA shall notify RTPA in a timely manner of receipt of a protest.
- b. RTPA shall submit the following information not later than ten (10) business days after receipt of notification by the FTA of the protest:
  - a copy of RTPA's protest procedure
  - a description of the process followed concerning the protester's protest
  - any supporting documentation
- c. RTPA shall provide protester with a copy of the above submission.

5. Protester Comments

The protester must submit any comments on the RTPA submission not later than ten (10) business days after the protester's receipt of the RTPA submission.

6. *Withholding of Award*

When a protest has been timely filed with RTPA before award, RTPA shall not make an award prior to five (5) business days after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless RTPA determines that:



- a. The items to be procured are urgently required;
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. Failure to make prompt award will otherwise cause undue harm to RTPA or the federal government.

The FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

7. FTA Action

Upon receipt of the submissions, the FTA will either request further information or a conference among the parties, or will render a decision on the protest.