Napa County

Board of Supervisors Chambers
1195 Third Street, Third Floor
Napa, CA 94559

Agenda

Tuesday, January 23, 2024
9:00 AM

Board of Supervisors Chambers
1195 Third Street, Third Floor

Board of Supervisors

GENERAL INFORMATION

The Board of Supervisors meets as specified in its adopted annual calendar on Tuesdays at 9:00 A.M. in regular session at 1195 Third Street, Suite 310, Napa, California 94559. The meeting room is wheelchair accessible. Assistive listening devices and interpreters are available through the Clerk of the Board of the Napa County Board of Supervisors. Requests for disability related modifications or accommodations, aids or services may be made to the Clerk of the Board's office no less than 72 hours prior to the meeting date by contacting (707) 253-4580.

The agenda is divided into three sections:

CONSENT ITEMS - These matters typically include routine financial or administrative actions, as well as final adoption of ordinances that cannot be both introduced and adopted at the same meeting. Any CONSENT ITEMS can be discussed separately at the request of any person. CONSENT ITEMS are usually approved with a single motion.

PUBLIC HEARINGS - These items are noticed public hearings pursuant to government code.

ADMINISTRATIVE ITEMS - These items include significant policy and administrative actions and are classified by program areas.

All materials relating to an agenda item for an open session of a regular meeting of the Board of Supervisors which are provided to a majority or all of the members of the Board by Board members, staff or the public within 72 hours of but prior to the meeting will be available for public inspection, at the time of such distribution, in the office of the Clerk of the Board of Supervisors, 1195 Third Street, Suite 305, Napa, California 94559, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., except for County holidays. Materials distributed to a majority or all of the members of the Board at the meeting will be available for public inspection after the meeting. Availability of materials related to agenda items for inspection does not include materials which are exempt from disclosure under the California Government Code.

ANY MEMBER OF THE AUDIENCE DESIRING TO ADDRESS THE BOARD:

ON A MATTER ON THE AGENDA

Please proceed to the podium when the matter is called and, after receiving recognition from the Chair, give your name and your comments or questions. In order that all interested parties have an opportunity to speak, please be brief and limit your comments to the specific subject under discussion. Time limitations shall be at the discretion of the Chair or Board, but is generally limited to three minutes.

ON A MATTER NOT ON THE AGENDA

Public comment is an opportunity for members of the public to speak on items that are not on the agenda but are within the subject matter jurisdiction of Napa County and its related districts and agencies. Public comment is limited to three minutes per speaker, subject to the discretion of the Chair. Comments should be brief and focused, and speakers should be respectful of one another who may have different opinions. The Board is here to listen to everyone who wishes to address them, but everyone has the responsibility to act in a civil manner. Please remember this meeting is being recorded and broadcast on live television. The County will not tolerate profanity, hate speech, abusive language, or threats. Also, while public input is appreciated, the Brown Act prohibits the Board from taking any action today on matters raised during public comment.

How to Watch or Listen to the Napa County Board of Supervisors Meetings

The Napa County Board of Supervisors will continue to meet pursuant to the annually adopted meeting calendar available at the following link:

https://www.countyofnapa.org/1429/Board-of-Supervisors-Special-Districts-C

The Board realizes that not all County residents have the same ways to stay engaged, so several alternatives are offered. Remote Zoom participation for members of the public is provided for convenience only. In the event that the Zoom connection malfunctions for any reason, the Board of Supervisors reserves the right to conduct the meeting without remote access.

Please watch or listen to the Board of Supervisors meeting in one of the following ways:

1. Attend in-person at the Board of Supervisors Chambers, 1195 Third Street, Napa Suite 305.
2. Watch via YouTube at https://www.youtube.com/@NapaCounty/streams.
3. Watch online at https://napa.legistar.com/Calendar.aspx (click the “In Progress” link in the “Video” column).
4. Watch on Napa Valley TV Channel 28.
5. Watch on Zoom via www.zoom.us/join (Meeting ID: 842-343-169) or listen on Zoom by calling 1-669-900-6833 (Meeting ID: 842-343-169).

If you are unable to attend the meeting in person and wish to submit a general public comment or a comment on a specific agenda item, please do the following:

1. Call the Board of Supervisors Public Comment Line at 707-299-1776 during the item on which you want to speak. Comments will be limited to three minutes, subject to the discretion of the Chair. If you cannot make the meeting, you may leave a comment by voice mail by calling the Public Comment Line before or after the meeting.

2. Email your comment to publiccomment@countyofnapa.org.

Your comment will be shared with all members of the Board of Supervisors.

For more information, please contact the Clerk of the Board's office at 707-253-4580 or email clerkoftheboard@countyofnapa.org.

1. CALL TO ORDER; ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. PET OF THE WEEK

4. PRESENTATIONS, PROCLAMATIONS, AND COMMENDATIONS

A. Present a certificate of Board Commendation to Catalina Chavez recognizing her dedicated service to Napa County as a long-standing member of the Advisory Board for Alcohol and Drug Programs. **24-114**

5. CONSENT CALENDAR - SPECIAL DISTRICTS

In-Home Supportive Services Public Authority of Napa County

A. Accept and file the In-Home Supportive Services Agency financial audit report for the fiscal year ended June 30, 2023. (No Fiscal Impact, Mandatory) **24-66**

Attachments: Financial Audit Report
Letter

Napa Berryessa Resort Improvement District

B. Approve a Budget Amendment for Fiscal Year 2023-24 Napa Berryessa Resort Improvement (NBRID) Debt Service totaling $356,621 to pay the debt service for the Series A (Wastewater System Improvements) and Series B (Water System Improvements) Bonds. (Fiscal Impact: $356,621 expense; NBRID-Debt Service Fund; Not budgeted; Mandatory) **23-1589**
[4/5 vote required]

Attachments: Amortization Schedule

6. CONSENT CALENDAR

Auditor-Controller

A. Accept and file the Napa County Local Transportation Fund financial audit report for fiscal year ended June 30, 2023. (No Fiscal Impact, Mandatory) **24-64**

Attachments: Financial Audit Report
Letter

B. Accept and file the GANN Appropriation Limit agreed-upon procedure reports for fiscal years ended June 30, 2022 and June 30, 2023. (No Fiscal Impact, Mandatory) **24-65**

Attachments: Appropriations Limit Report 2021-22
Appropriations Limit Report 2022-23

C. Accept and file the quarterly report of cash and non-cash donations received for the quarter-ended December 31, 2023 (Fiscal Impact: Increased Revenues, Discretionary). **24-95**

Attachments: Donations Report

D. Accept and file the Annual Comprehensive Financial Report (ACFR) and the Single Audit Report - Schedule of Expenditures of Federal Awards (SEFA), for fiscal year ended June 30, 2023. (No Fiscal Impact, Mandatory) **24-112**

Clerk of the Board

E. Approval of minutes from the January 8, 2024 & January 9, 2024, special and regular meetings. **24-109**

Attachments: January 8, 2024
January 9, 2024

F. Reappointment of James V. Jones, for a ninth term, as Trustee for the Bar Association and Anthony Halstead, for a third term, as Trustee for the Board of Supervisors to the Napa County Law Library Board of Trustees with the terms of office to commence immediately and expire December 31, 2024 (No Fiscal Impact). **24-153**

Attachments: Jones Reappointment Application
Halstead Reappointment Application

G. Reappointment of Kelsey Petithomme, for a second term, to represent Member with the term of office to commence immediately and expire January 1, 2028; appointment of Torence J. Powell to represent Member with the term of office to commence immediately and expire January 1, 2027; and appointment of Vanessa M. Rubio with the term of office to commence immediately and expire January 1, 2025 on the First 5 Napa County Children and Families Commission. (No Fiscal Impact) **24-154**

Attachments: Petithomme Application
Powell Application
Rubio Application
Letter of Recommendation

County Counsel

H. Adopt an Ordinance approving a minor boundary change between Napa and Sonoma counties proposed by Sheldon Richards. (No Fiscal Impact, Mandatory) **24-73**

Attachments: Ordinance
Exhibit A

County Fire Department

I. Approve and authorize Amendment No. 2 to Agreement No. 190110B with Priority Dispatch, Inc. increasing the annual maintenance amount to $10,630 and extending the term July 1, 2023, through June 30, 2024 for Emergency Medical Dispatching services. (Fiscal Impact: $10,630 expense; Fire Fund 2100 Division 2100000; Budgeted; Discretionary) **24-54**

Attachments: Agreement

J. Approve and authorize Memorandum of Understanding Agreement No. 240250B with the City of Napa, City of American Canyon Fire Protection District, City of St. Helena, and the City of Calistoga to apply for regional grants from various governments. (No Fiscal Impact). **24-135**

Attachments: Agreement

Health and Human Services Agency

K. Approve and authorize Amendment No. 2 to Agreement No. 190328B with Hospital Association of Southern California (ReddiNet) to exchange real-time medical information, increasing the amount by $1,205 for a new maximum of $65,475 and extending the term through June 30, 2027. (Fiscal Impact: $65,475; Health and Human Services Agency Fund 2000, Public Health Division 20001; Budgeted; Discretionary) **24-06**

Attachments: Agreement

L. Approve and authorize Agreement No. 240204B with On the Move, Inc., for a contract maximum of $164,892 for the Transitional Housing Program (THP) Round 5 and Housing Navigation and Maintenance Program (HNMP) Round 2 grant allocations from the California Department of Housing and Community Development (HCD). (Fiscal Impact: $164,892; Health and Human Services Agency Fund 2000, CWS Division 20004; Budgeted; Discretionary) **24-07**

Attachments: Agreement

M. Approve and authorize Certification Statement Agreement No. 240246B with the Department of Health Care Services (DHCS) for California Children's Services (CCS) confirming the County's agreement to comply with all applicable provisions of State and Federal laws governing this program for Fiscal Year 2023-2024. (No Fiscal Impact, Mandatory). **24-27**

Attachments: Agreement

N. Approve and authorize Agreement No. 240217B with Cope Family Center; Agreement No. 240219B with Puertas Abiertas Community **24-75**

Resource Center; Agreement No. 240220B with Parents Child Advocacy Network; and Agreement No. 240218B with Up Valley Family Centers of Napa Valley for Fiscal Year (FY) 2023-2024 to provide outreach and linkage to the Medi-Cal program and services and facilitate the Medi-Cal application process. (Fiscal Impact: $96,513; Health and Human Services Agency Fund 2000; Public Health Subdivision 20001; Budgeted; Discretionary).

Attachments: Cope Family Center
Puertas Abiertas Community Resource Center
Parents Child Advocacy Network
UpValley Family Centers

O. Accept an anonymous donation in the amount of $11,350 to the County Children's Trust Fund (CCTF). (Fiscal Impact: $11,350; Health and Human Services Agency Fund 2000; Child Welfare Services Division, Special Revenue Fund Children's Trust Fund 2000450; Budgeted; Discretionary) **24-93**

Housing & Homeless Services – Division of CEO's Office

P. Approve and authorize Amendment No. 3 to Master Services Agreement No. 220376B with Partnership Health Plan for the County to provide community support to Medi-Cal participants through December 2024 generating approximately $750,000 in yearly revenue (Fiscal Impact: Revenues of $750,000, Housing & Homeless Fund 2030, Budgeted, Discretionary). **24-110**

Attachments: Agreement

Human Resources – Division of CEO's Office

Q. Adopt a Resolution to amend the Table and Index of Classes to reflect a salary increase for members of the Board of Supervisors, effective July 1, 2023, as authorized by Napa County Ordinance No. 1263. (Fiscal Impact, $18,500 annual expense; General Fund; Budgeted; Mandatory) **24-26**

Attachments: Resolution

R. Adopt a Resolution to amend the Departmental Allocation List for the Planning, Building, and Environmental Services Department. (Fiscal Impact: $20,737 annual expense; Building Inspection Fund; Budgeted; Discretionary) **24-63**

Attachments: Resolution

S. Adopt a Resolution to amend the Table and Index of Classes, the Departmental Allocation List for the County Executive Office, and appropriate personnel policies. (Fiscal Impact: $19,287 annually; General Fund; Budgeted; Discretionary) **24-88**

Attachments: Resolution

T. Adopt a Resolution to amend the Departmental Allocation List for Housing & Homeless Services effective January 23, 2024, with a net increase of 1.0 full-time equivalent and a Budget Amendment increasing Housing and Homeless Division appropriations by $87,000 from Affordable Housing Fund available fund balance. (Fiscal Impact: $170,000 annually; BAHFA Grant Funding; Not Budgeted; Discretionary) **24-138**
[4/5 vote required]

Attachments: Resolution

Library

U. Accept and file the quarterly report of donations in the amount of $2,000 or less gifted to Library from October 1, 2023, through December 31, 2023, and authorization to accept a donation in the amount of $3,000 from the Rasmussen Family Fund. (Fiscal Impact, $3,000; Napa County Library Fund 2020; Budgeted; Discretionary) **23-2058**

Attachments: Donations
Letter of Appreciation

Probation

V. Approve and authorize Agreement No. 240248B with Dr. Ryan Dunnigan, for a maximum of $18,000 annually for the term January 1, 2024 to June 30, 2025, with the provision of two automatic annual renewals, to provide mandated pre-employment psychological and arming evaluation services, return to duty/fitness psychological evaluations, and individual post-incident debriefing sessions. (Fiscal Impact: $18,000; General Fund 1000, Division 1420; Not Budgeted; Mandatory) **24-33**

Attachments: Agreement

Public Works

W. Accept a bequest in the amount of $510,000 from the Ursula Haase Trust of 2008 to the Napa County Animal Shelter and authorize the Chair to sign a letter of appreciation and a trust distribution receipt. (Fiscal Impact: $510,000 Revenue; Animal Shelter Fund 5040, Division 50400 (Operations) and Division 50405 (Capital Projects); Not Budgeted; Discretionary) **24-76**

Attachments: Letter of Appreciation
Trust Distribution Receipt

X. Award a construction contract to Gordon N. Ball, Inc. for the replacement of the Chiles Pope Bridge, appropriate funding from the Accumulated Capital Outlay Fund, and relieve the apparent low bidder Anvil Builders of its erroneous bid. (Fiscal Impact: $9,181,038; Roads Fund; Not Budgeted; Discretionary) **24-86**
[4/5 vote required]

Attachments: Anvil Request for Bid Relief
Budget Summary

Y. Approve and authorize Amendment No.1 to Agreement No. 230243B with Mead & Hunt, Inc. for professional engineering services in support of the Airport's approved Terminal Area Redevelopment Phase 1 Project by increasing contract on-call services by $50,000 for a new maximum compensation of $163,435. (Fiscal impact: $50,000; Airport Fund 5010, Division 50105, Project 23041; Budgeted; Discretionary) **24-100**

Attachments: Agreement

Sheriff

Z. Authorize the purchase of a capital asset for a replacement conference table with appropriation authority for the Sheriff's Office. (Fiscal Impact: $10,126, General Fund 1000, Division 13600, Budgeted; Discretionary) **24-42**
[4/5 vote required]

AA. Adopt a Resolution and approve appropriation authority to participate in the federally funded Fiscal Year 2023 Emergency Management Performance Grant for a maximum amount of $151,952, and appropriate authority for related expenditures and identified revenue for the period of July 1, 2023, through June 30, 2025, to support emergency preparedness efforts. (Fiscal Impact: $151,952, General Fund 1000, Office of Emergency Services Division 13800, Not Budgeted, Discretionary) **24-77**
[4/5 vote required]

Attachments: Resolution

AB. Adopt a Resolution and approve appropriation authority to participate in the federally funded Homeland Security Grant Program (HSGP) for three grant years- federal FY23, FY24 and FY25, with an allocation of $204,898 for FY23 for the period September 1, 2023, through May 31, 2026. (Fiscal Impact, $204,898, Office of Emergency Services Division 13800 and Fire Protection Operations Division 21000, Not Budgeted, Discretionary) **24-90**
[4/5 vote required]

Attachments: Resolution

AC. Approve and authorize Agreement No. 240266B with Dynamic Planning for a maximum amount of $186,955 for the term January 23, 2024, through June 30, 2025, with an automatic renewal provisional for two additional years for a Multi-Jurisdictional Hazard Mitigation Plan. (Fiscal Impact, $186,955, General Fund 1000, Budgeted, Discretionary) **24-106**

Attachments: Agreement

7. PUBLIC COMMENT

8. BOARD OF SUPERVISORS REPORTS AND ANNOUNCEMENTS

9. DISCUSSION OF ITEMS PULLED FROM CONSENT CALENDARS

10. ADMINISTRATIVE ITEMS - SPECIAL DISTRICTS

11. ADMINISTRATIVE ITEMS

County Executive Office

A. Receive a presentation from Dr. Robert Eyler, economist at Sonoma State University who will provide the Board with an update on the economic outlook for Napa County (No Fiscal Impact, Discretionary). **23-1847**

Attachments: Presentation (added after meeting)

B. Approve the Fiscal Year 2024-25 Strategic Financial Plan and Budget Policy. (No Fiscal Impact, Discretionary) **24-99**

Attachments: Strategic Financial Plan and Budget Policy 2024 clean
Strategic Financial Plan and Budget Policy 2024 redline
Correction Memoranda (added after meeting)

C. Adopt a Resolution and approve and authorize Agreement No. 240259B taking necessary steps to sell approximately 70.6-acres of County-owned land commonly known as the Calistoga Fairgrounds property to the City of Calistoga for $2,000,000 with a retained right for County to repurchase the Property under the following **24-81**

circumstances: change in zoning and/or proposed sale or lease. (Fiscal Impact: $2,000,000 Revenue; General Fund; Not Budgeted; Discretionary)
[4/5 vote required]

CONTINUED FROM JANUARY 9, 2024

Attachments: Resolution
Agreement
Exhibit C-1
Exhibit D
Exhibit D-3
Easement
Correction Memoranda (added after meeting)

12. PUBLIC HEARING - SPECIAL DISTRICTS

13. PUBLIC HEARINGS

14. CLOSED SESSION

A. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE (Government Code Section 54957) **24-111**

15. ADJOURNMENT

ADJOURN TO THE BOARD OF SUPERVISORS REGULAR MEETING, TUESDAY, FEBRUARY 6, 2024 AT 9:00 A.M.

I HEREBY CERTIFY THAT THE AGENDA FOR THE ABOVE STATED MEETING WAS POSTED AT A LOCATION FREELY ACCESSIBLE TO MEMBERS OF THE PUBLIC AT THE NAPA COUNTY ADMINISTRATIVE BUILDING, 1195 THIRD STREET, NAPA, CALIFORNIA ON FRIDAY, JANUARY 19, 2024 BY 5:00 P.M. A HARDCOPY SIGNED VERSION OF THE CERTIFICATE IS ON FILE WITH THE CLERK OF THE BOARD OF SUPERVISORS AND AVAILABLE FOR PUBLIC INSPECTION.

Neha Hoskins (By e-signature)

NEHA HOSKINS, Clerk of the Board

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-114

TO: Board of Supervisors

FROM: Ryan J. Alsop - County Executive Officer

REPORT BY: Leah Doyle-Stevens - Staff Aide, Board of Supervisors

SUBJECT: Commendation presentation to Catalina Chavez recognizing her outstanding work on the Napa County Advisory Board for Alcohol and Drug Programs

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RECOMMENDATION

Present a certificate of Board Commendation to Catalina Chavez recognizing her dedicated service to Napa County as a long-standing member of the Advisory Board for Alcohol and Drug Programs.

BACKGROUND

AWAITING THIS INFORMATION

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-66

TO: Board of Supervisors

FROM: Tracy A. Schulze - Auditor-Controller

REPORT BY: Georgina Panganiban - Accounting Manager

SUBJECT: In-Home Supportive Services Agency Audit Report for Fiscal Year Ended June 30, 2023

RECOMMENDATION

Accept and file the In-Home Supportive Services Agency financial audit report for the fiscal year ended June 30, 2023. (No Fiscal Impact, Mandatory)

BACKGROUND

Brown Armstrong Accountancy Corporation has audited the financial statements for the Napa County In-Home Supportive Services Agency (IHSS) for the year ended June 30, 2023. The report presented today was prepared in accordance with generally accepted auditing standards and in compliance with California Government Code Section 25250. The report has an unqualified (clean) opinion, with no management comments.

Requested Action: Accept and file the report.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	No
Future fiscal impact:	None
Consequences if not approved:	The County would not be in compliance with California Government Code

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California

Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

IN-HOME SUPPORTIVE SERVICES
PUBLIC AUTHORITY OF NAPA COUNTY
(A Component Unit of the County of Napa, California)

BASIC FINANCIAL STATEMENTS
AND
INDEPENDENT AUDITOR'S REPORT

FOR THE FISCAL YEAR ENDED
JUNE 30, 2023

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY

JUNE 30, 2023

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IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY

AUTHORITY GOVERNING BOARD

JUNE 30, 2023

Name	Position	Date of Original Appointment	Current Term Expires
Belia Ramos	Chair Board of Supervisors Napa County	1/4/2016	12/31/2024
Joelle Gallagher	Vice Chair Board of Supervisors Napa County	1/3/2023	12/31/2026
Alfredo Pedroza	Member Board of Supervisors Napa County	1/4/2016	12/31/2024
Anne Cottrell	Member Board of Supervisors Napa County	1/3/2023	12/31/2026
Ryan Gregory	Member Board of Supervisors Napa County	1/4/2016	12/31/2024

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY

PUBLIC AUTHORITY ADVISORY COMMITTEE

JUNE 30, 2023

Name	Position	Date of Original or Last Appointment	Current Term Expires
VACANT	Current or Past User of IHSS Chair	N/A	N/A
Elaine Paoli	Current or Past User of IHSS Vice-Chair	11/02/2021	09/01/2023
VACANT	Current or Past User of IHSS Treasurer	N/A	N/A
Mary Palmer	Commission on Aging Representative	10/08/2019	09/01/2023
VACANT	Provider of IHSS to Family Member or Non-Family Member Member	N/A	N/A
VACANT	Provider of IHSS to Family Member or Non-Family Member Member	N/A	N/A
VACANT	Community Member	N/A	N/A
VACANT	Current or Former User of IHSS	N/A	N/A
VACANT	Current or Former User of IHSS	N/A	N/A

FINANCIAL SECTION

INDEPENDENT AUDITOR'S REPORT

Board of Supervisors of Napa County
Acting as the Governing Board of
In-Home Supportive Services Public
Authority of Napa County
Napa, California

Report on the Audit of the Financial Statements

Opinions

We have audited the accompanying basic financial statements of the governmental activities and the major fund of the In-Home Supportive Services Public Authority of Napa County (the Authority), a component unit of the County of Napa, as of and for the fiscal year ended June 30, 2023, and the related notes to the basic financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the major fund of the Authority as of June 30, 2023, and the respective changes in financial position for the fiscal year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the auditing standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Authority and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of these basic financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of basic financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

BAKERSFIELD
4200 Truxtun Avenue, Suite 300
Bakersfield, CA 93309
661-324-4971

FRESNO
10 River Park Place East, Suite 208
Fresno, CA 93720
559-476-3592

STOCKTON
2423 West March Lane, Suite 202
Stockton, CA 95207
209-451-4833

REGISTERED with the Public Company Accounting Oversight Board and MEMBER of the American Institute of Certified Public Accountants

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Authority's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis and Budgetary Comparison Schedule, as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board (GASB), who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated January 4, 2024, on our consideration of the Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Authority's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control over financial reporting and compliance.

BROWN ARMSTRONG
ACCOUNTANCY CORPORATION

Brown Armstrong
Accountancy Corporation

Bakersfield, California
January 4, 2024

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY
MANAGEMENT'S DISCUSSION AND ANALYSIS
FOR THE FISCAL YEAR ENDED JUNE 30, 2023

The In-Home Supportive Services (IHSS) Public Authority of Napa County (the Authority) is a legal entity that was established by the Board of Supervisors (the Board) of Napa County (the County) by resolution pursuant to the California Welfare and Institutions Code Section 12301.6. The Authority is governed by the County's Board sitting as the Authority's Governing Body. The Authority is also served by an In-Home Supportive Services Public Authority Advisory Committee. Currently, five employees working for the Authority are contracted through the County: a Manager, a Supervisor, two Registry Training Specialists, and an Administrative Assistant. Offices are co-located with Napa County Comprehensive Services for Older Adults.

As management of the Authority, we offer readers this narrative overview and analysis of the financial activities for the fiscal year ended June 30, 2023.

OVERVIEW OF THE BASIC FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to the Authority's basic financial statements. The Authority's basic financial statements comprise three components: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to the basic financial statements. This report also contains required supplementary information in addition to the basic financial statements themselves.

Government-Wide Financial Statements

The government-wide financial statements are designed to provide readers with a broad overview of the Authority's finances, in a manner similar to a private sector business.

The Statement of Net Position presents information on all of the Authority's assets and liabilities, with the difference between the two reported as net position.

The Statement of Activities presents information showing how the Authority's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in the statement for some items that will only result in cash flows in future fiscal years.

Fund Financial Statements

A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The Authority, like other local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. Fund financial statements report essentially the same functions as those reported in the government-wide financial statements. However, unlike the government-wide financial statements, fund financial statements focus on near-term inflows and outflows of spendable resources, as well as on balances of spendable resources available at the end of the fiscal year.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balance provide a reconciliation to facilitate the comparison between the governmental fund and government-wide financial statements.

The Authority adopts an annual budget for its governmental fund. A budgetary comparison statement has been provided for the governmental fund to demonstrate compliance with the budget.

Notes to Basic Financial Statements

The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements.

Required Supplementary Information (RSI)

RSI is presented concerning the Authority's General Fund budgetary comparison schedule. The Authority adopts an annual appropriated budget for its General Fund. A budgetary comparison schedule has been provided for the General Fund to demonstrate compliance with this budget.

FINANCIAL ANALYSIS OF THE AUTHORITY

The Authority has presented its basic financial statements under the reporting model required by the Governmental Accounting Standards Board Statement No. 34 (GASB 34), *Basic Financial Statements – and Management's Discussion and Analysis (MD&A) – for State and Local Governments*.

Net Position

Condensed Statement of Net Position
As of June 30,

	2023	2022	Variance
Current Assets	$ 587,562	$ 525,320	$ 62,242
Total Assets	587,562	525,320	62,242
Current Liabilities	490,045	419,628	70,417
Total Liabilities	490,045	419,628	70,417
Unrestricted	97,517	105,692	(8,175)
Total Net Position	$ 97,517	$ 105,692	$ (8,175)

Net position may serve over time as a useful indicator of a government's financial position. In the case of the Authority, assets exceeded liabilities by $97,517 because of an increase in the amount due from other governments as of June 30, 2023.

Changes in Net Position

The Authority does not have business-type activities and so the analysis presented below for the government-wide financial statements also represents an analysis of the Authority's governmental activities.

The Authority's net position decreased overall by $8,175 during fiscal year 2022-23 due to an over expenditure of the IHSS Public Authority's capped allocation, which was offset by an increase in the General Fund allocation.

Condensed Statement of Activities
For the Fiscal Years Ended June 30, 2023 and 2022

	2023	2022	Variance
Program Expenses			
Services and Supplies	$ 1,288,860	$ 1,205,806	$ 83,054
Rent and Utilities	17,267	16,168	1,099
Total Program Expenses	1,306,127	1,221,974	84,153
Program Revenues			
Intergovernmental Revenue	1,225,214	1,175,843	49,371
County Contributions	72,708	72,708	-
Miscellaneous	30	-	30
Total Program Revenues	1,297,952	1,248,551	49,401
Change in Net Position	(8,175)	26,577	(34,752)
Net Position, Beginning of Year	105,692	79,115	26,577
Net Position, End of Year	$ 97,517	$ 105,692	$ (8,175)

FUND FINANCIAL ANALYSIS

As noted earlier, fund accounting is used by the Authority to ensure and demonstrate compliance with finance-related legal requirements.

For the fiscal year ended June 30, 2023, the Authority reported an ending fund balance of $34,181, an increase of $211,261 from the prior fiscal year.

Total revenue, consisting mainly of intergovernmental funds and County contributions, increased by $532,805 over the prior fiscal year, primarily as a result of an increase in care provider total paid health benefits and an increase in staffing hours in the IHSS Public Authority. Total expenditures increased by $84,153 over the prior fiscal year, as a result of an increase in care provider total paid health benefits and an increase in staffing hours in the IHSS Public Authority. Deferred State and Federal payments of $63,336 are due to the actual timing of receiving the revenues (greater than 90 days after the close of the fiscal year), also representing amounts not available to fund current expenditures.

BUDGETARY HIGHLIGHTS

Total revenues were over budget by 16%, or $210,572, and total expenditures were under budget by 0.1%, or $889. Total revenues were over budget as a result of lower deferred State and Federal payments due to the timing of receiving the revenues. Expenditures were over budget mainly due to an an increase in care provider total paid health benefits and an increase in staffing hours in the IHSS Public Authority.

ECONOMIC FACTORS AND NEXT FISCAL YEAR'S BUDGET

The IHSS Public Authority allocation draws down a Federal match resulting in an estimated $ 229,611 in State, Federal, and County revenue for fiscal year 2023-24. On June 16, 2020, the Authority entered into a Memorandum of Understanding (MOU) with the Service Employees International Union Local 2015 (SEIU 2015) representing Napa County IHSS care providers. The MOU provides a $1.45 wage supplement effective September 1, 2020, and applied subsequently to any increase to the State minimum wage. Wages for IHSS care providers went from $15.45 on January 1, 2021, to $16.45 on January 1, 2022, and from $16.45 to $16.95 on January 1, 2023, as a result of a State minimum wage increase. The State minimum wage is increasing again effective January 1, 2024, which will increase the provider wage another $0.50/hour resulting in a new wage of $17.45/hour. The County continues to contribute to a health benefit for IHSS care providers in the amount of $0.40 per paid hour. The IHSS Public Authority and SEIU 2015 are currently in contract negotiations and it is likely that the provider wage will increase beyond $17.45 in this fiscal year. There is also a possibility that the benefit amount will change which would also have a fiscal impact.

DEBT ADMINISTRATION

For the fiscal year ended June 30, 2023, the Authority did not have any long-term obligations outstanding.

CAPITAL ASSETS

For the fiscal year ended June 30, 2023, the Authority did not have any capital assets.

CONTACTING THE AUTHORITY

This financial report is designed to provide a general overview of the Authority's finances for all those interested. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the In-Home Supportive Services Public Authority of Napa County, 650 Imperial Way, Suite 101, Napa, California 94559.

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY
STATEMENT OF NET POSITION
JUNE 30, 2023

ASSETS	
Current Assets	
Due from Other Governments	$ 586,812
Prepaid Expenses	750
Total Current Assets	587,562
Total Assets	587,562
LIABILITIES	
Current Liabilities	
Accounts Payable	63,452
Due to Other Governments	426,593
Total Current Liabilities	490,045
Total Liabilities	490,045
NET POSITION	
Unrestricted	97,517
Total Net Position	$ 97,517

The accompanying notes are an integral part of these financial statements.

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY
STATEMENT OF ACTIVITIES
FOR THE FISCAL YEAR ENDED JUNE 30, 2023

PROGRAM EXPENSES	
Public Assistance:	
Services and Supplies	$ 1,288,860
Rent and Utilities	17,267
Total Program Expenses	1,306,127
PROGRAM REVENUES	
Intergovernmental Revenue:	
Federal	716,705
State	508,509
County Contributions	72,708
Miscellaneous	30
Total Program Revenues	1,297,952
Change in Net Position	(8,175)
Net Position, Beginning of Year	105,692
Net Position, End of Year	$ 97,517

The accompanying notes are an integral part of these financial statements.

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY
BALANCE SHEET
GOVERNMENTAL FUND
JUNE 30, 2023

ASSETS		
Due from Other Governments	$	586,812
Prepaid Expenses		750
Total Assets	$	587,562
LIABILITIES		
Accounts Payable	$	63,452
Due to Other Governments		426,593
Total Liabilities		490,045
DEFERRED INFLOWS OF RESOURCES		
Unavailable Revenue		63,336
FUND BALANCE		
Unassigned		34,181
Total Fund Balance		34,181
Total Liabilities, Deferred Inflows of Resources, and Fund Balance	$	587,562

The accompanying notes are an integral part of these financial statements.

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY
RECONCILIATION OF THE BALANCE SHEET TO THE
STATEMENT OF NET POSITION
JUNE 30, 2023

Fund balance - total governmental fund (Page 10)	$	34,181
Amounts reported for governmental activities in the Statement of Net Position are different because:		
Unavailable revenues represent amounts that are not available to fund current expenditures and, therefore, are not reported in the governmental fund.		63,336
Net position of governmental activities (Page 8)	$	97,517

The accompanying notes are an integral part of these financial statements.

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY
STATEMENT OF REVENUES, EXPENDITURES, AND
CHANGES IN FUND BALANCE
GOVERNMENTAL FUND
FOR THE FISCAL YEAR ENDED JUNE 30, 2023

REVENUES		
Intergovernmental Revenue:		
Federal	$	852,314
State		592,336
County Contributions		72,708
Miscellaneous		30
Total Revenues		1,517,388
EXPENDITURES		
Public Assistance:		
Services and Supplies		1,288,860
Rent and Utilities		17,267
Total Expenditures		1,306,127
Net Change in Fund Balance		211,261
Fund Balance, Beginning of Year		(177,080)
Fund Balance, End of Year	$	34,181

The accompanying notes are an integral part of these financial statements.

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY
RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN FUND BALANCE TO THE STATEMENT OF ACTIVITIES
FOR THE FISCAL YEAR ENDED JUNE 30, 2023

Net change in fund balance - total governmental fund (Page 12)	$	211,261
Amounts reported for governmental activities in the Statement of Activities are difference because:		
Revenues in the Statement of Activities that do not provide current financial resources are not reported as revenues in the governmental fund.		(219,436)
Change in net position of governmental activities (Page 9)	$	(8,175)

The accompanying notes are an integral part of these financial statements.

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING PRINCIPLES

A. Reporting Entity

The In-Home Supportive Services Public Authority of Napa County (the Authority) is a legal corporate entity that was established by the Board of Supervisors (the Board) of Napa County (the County) by resolution pursuant to the California Welfare and Institutions Code Section 12301.6. The Authority is governed by the County's Board, sitting as the Authority's Governing Board. The Authority is also served by an In-Home Supportive Services Public Authority Advisory Committee (the Advisory Committee).

The Advisory Committee provides, as needed, ongoing advice and recommendations regarding in-home supportive services to the Authority's Governing Board. The Advisory Committee also communicates with any administrative body in the County that is related to the delivery and administration of in-home supportive services. In addition, the Advisory Committee provides a method of community input for citizens who use or provide in-home supportive services.

The Authority is governed by the County Board serving in a separate capacity as the Governing Board of the Authority. As such, the Authority is an integral part of the County and, accordingly, the accompanying basic financial statements are included as a component unit of the basic financial statements of the County.

B. Basis of Presentation and Accounting

Government-Wide Financial Statements

The Statement of Net Position and Statement of Activities display information about the primary government (the Authority). These statements include the financial activities of the overall Authority.

The Statement of Activities presents a comparison between direct expenses and program revenues for the Authority's governmental activities. Direct expenses are those that are specifically associated with the Authority. Program revenues include grants and contributions that are restricted to meeting the operational or capital requirements of the Authority.

Revenues that are not classified as program revenues, including all taxes and investment income, are presented instead as general revenues. The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of when the related cash flows take place. Non-exchange transactions, in which the Authority gives (or receives) value without directly receiving (or giving) value in exchange, include grants, entitlements, and donations. Revenues from grants, entitlements, and donations are recognized in the fiscal year in which all eligibility requirements have been satisfied.

When both restricted and unrestricted net position are available, restricted resources are used only after unrestricted resources are depleted.

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING PRINCIPLES (Continued)

B. Basis of Presentation and Accounting (Continued)

Fund Financial Statements

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized when measurable and available ("susceptible to accrual"). Taxes, interest, certain state and federal grants, and charges for services revenues are accrued when their receipt occurs within 90 days after the end of the accounting period so as to be measurable and available. Expenditures generally are recorded when a liability is incurred, as under the accrual basis of accounting. However, debt service expenditures, as well as expenditures related to compensated absences, are recorded only when payment is due.

The Authority reports the following major governmental fund:

- The General Fund is the Authority's primary operating fund. It accounts for all financial resources of the general government.

C. Due from Other Governments

These amounts represent receivables from the State and Federal governments. Management has determined the Authority's receivables are fully collectible. Accordingly, no allowance for doubtful accounts has been made.

D. Due to Other Governments

Amounts due to the County represent outstanding warrants and other reconciling items in excess of the Authority's cash balance in the County Treasury.

E. Use of Estimates

The preparation of basic financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

F. Deferred Outflows/Inflows of Resources

In addition to assets, the statement of net position and/or balance sheet will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, deferred outflows of resources, represents a consumption of net position or fund balance that applies to a future period and so will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, the statement of net position and/or balance sheet will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, deferred inflows of resources, represents an acquisition of net position or fund balance that applies to a future period and so will not be recognized as an inflow of resources (revenue) until that time. The Authority has only one type of item, which arises only under a modified accrual basis of accounting, that qualifies for reporting in this category. Accordingly, the item, unavailable revenue, is reported only in the governmental fund balance sheet. The governmental fund reports unavailable revenues from one source: intergovernmental revenue. This amount is deferred and recognized as an inflow of resources in the period that the amount becomes available.

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING PRINCIPLES (Continued)

G. New Accounting Pronouncements Implemented

Governmental Accounting Standards Board (GASB) Statement No. 91 – *Conduit Debt Obligations.* The requirements of this statement are effective for fiscal years beginning after December 15, 2021. Earlier application is encouraged. This statement does not impact the financial statements or disclosures of the Authority as the Authority does not have these types of transactions.

GASB Statement No. 94 – *Public-Private and Public-Public Partnerships and Availability Payment Arrangements.* The requirements of this statement are effective for fiscal years beginning after June 15, 2022, and all fiscal years thereafter. This statement does not impact the financial statements or disclosures of the Authority as the Authority does not have these types of transactions.

GASB Statement No. 96 – *Subscription-Based Information Technology Arrangements.* The requirements of this statement are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter. This statement does not impact the financial statements or disclosures of the Authority as the Authority does not have these types of transactions.

GASB Statement No. 99 – *Omnibus 2022.* The requirements of this statement are effective as follows:

- The requirements related to extension of the use of the London Interbank Offered Rate (LIBOR), accounting for Supplemental Nutrition Assistance Program (SNAP) distributions, disclosures of nonmonetary transactions, pledges of future revenues by pledging governments, clarification of certain provisions in GASB Statement No. 34, as amended, and terminology updates related to GASB Statement No. 53 and GASB Statement No. 63 are effective upon issuance.
- The requirements related to leases, public-private and public-public partnerships (PPPs), and subscription-based information technology arrangements (SBITAs) are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter.
- The requirements related to financial guarantees and the classification and reporting of derivative instruments within the scope of GASB Statement No. 53 are effective for fiscal years beginning after June 15, 2023, and all fiscal years thereafter.

This statement does not impact the financial statements or disclosures of the Authority as the Authority does not have these types of transactions.

H. Future Accounting Pronouncements

GASB Statement No. 100 – *Accounting Changes and Error Corrections—an Amendment of GASB Statement No. 62.* For fiscal years beginning after June 15, 2023, and all reporting periods thereafter. Earlier application is encouraged. The Authority has not fully judged the impact of implementation of this standard on the financial statements.

GASB Statement No. 101 – *Compensated Absences.* The requirements of this statement are effective for fiscal years beginning after December 15, 2023, and all reporting periods thereafter. Earlier application is encouraged. The Authority has not fully judged the impact of implementation of this standard on the financial statements.

NOTE 2 – CASH AND INVESTMENTS

The Authority maintains all of its cash and investments with the County Treasurer in an investment pool. As of June 30, 2023, the Authority had a $0 balance in cash and investments. On a quarterly basis the Treasurer allocates interest to participants based upon their average daily balances. Required disclosure information regarding categorization of investments and other deposit and investment risk disclosures can be found in the County's financial statements. The County's financial statements may be obtained by contacting the Auditor-Controller's Office at 1195 Third Street, Suite B-10, Napa, California 94559. The County Treasury Oversight Committee oversees the Treasurer's investments and policies.

NOTE 2 – CASH AND INVESTMENTS (Continued)

Required disclosures for the Authority's deposit and investment risks at June 30, 2023, were as follows:

Credit risk	Not rated
Custodial risk	Not applicable
Concentration of credit risk	Not applicable
Interest rate risk	Not available

Investments held in the County's investment pool are available on demand and are stated at cost plus accrued interest, which approximates fair value. The Authority has no deposit or investment policy that addresses a specific type of risk.

NOTE 3 – RELATED PARTY TRANSACTIONS

During the fiscal year ended June 30, 2023, the Authority paid the County, a related party, $525,048 for employee administrative costs; office space; and administrative, information technology, legal, and accounting services.

In addition, the Authority received $72,708 during the fiscal year ended June 30, 2023, from the County, a related party. The County provides 4.8% of the Authority's revenues. The remainder of the Authority's funding is provided by the Federal government and the State of California.

Also, the County's General Fund advanced the Authority $426,593 to cover the cash deficit for the fiscal year ended June 30, 2023.

NOTE 4 – NET POSITION/FUND BALANCE

Net Position

Net position comprises the various net earnings from operating and nonoperating revenues, expenses, and capital contributions. Net position is classified into the following three components: net investment in capital assets, net position – restricted, and net position – unrestricted. The Authority reported only a net position – unrestricted balance at June 30, 2023.

Fund Balance

Governmental funds report fund balance in classifications based primarily on the extent to which the Authority is bound to honor constraints on the specific purposes for which amounts in the funds can be spent. As of June 30, 2023, fund balance for the governmental fund is made up of the following:

- *Nonspendable fund balance* – amounts that are not in spendable form or are required to be maintained intact.

- *Restricted fund balance* – amounts constrained to specific purposes by their providers (such as grantors, bondholders, and higher levels of government), through constitutional provisions, or by enabling legislation.

- *Committed fund balance* – amounts constrained to specific purposes by the Authority itself, using its highest level of decision-making authority. To be reported as committed, amounts cannot be used for any other purpose unless the Authority takes the same highest level of action to remove or change the constraint.

- *Assigned fund balance* – amounts the Authority intends to use for a specific purpose. Intent can be expressed by the Authority's Governing Board or by an official or body to which the Authority's Governing Board delegates the Authority.

- *Unassigned fund balance* – amounts that are available for any purpose. Positive amounts are reported only in the General Fund.

NOTE 5 – RISK MANAGEMENT

The Authority is exposed to various risks of loss related to general liability. The Authority is covered from risk of loss through PRISM (Public Risk Innovation, Solutions, and Management), formerly California State Association of Counties (CSAC) Excess Insurance Authority. Information about coverage can be found in the County's basic financial statements.

NOTE 6 – SUBSEQUENT EVENTS

Subsequent events have been evaluated through January 4, 2024, which is the date the basic financial statements were available to be issued.

REQUIRED SUPPLEMENTARY INFORMATION

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY
BUDGETARY COMPARISON SCHEDULE
FOR THE FISCAL YEAR ENDED JUNE 30, 2023

	Budgeted Amounts			Variance with
	Original	Final	Actual	Final Budget
REVENUES				
Intergovernmental Revenue:				
Federal	$ 645,255	$ 666,405	$ 852,314	$ 185,909
State	524,053	567,703	592,336	24,633
County Contributions	72,708	72,708	72,708	-
Miscellaneous	-	-	30	30
Total Revenues	1,242,016	1,306,816	1,517,388	210,572
EXPENDITURES				
Public Assistance:				
Services and Supplies	1,225,016	1,290,016	1,288,860	1,156
Rent and Utilities	17,000	17,000	17,267	(267)
Total Expenditures	1,242,016	1,307,016	1,306,127	889
Net Change in Fund Balance	$ -	$ (200)	211,261	$ 211,461
Fund Balance, Beginning of the Year			(177,080)	
Fund Balance, End of the Year			$ 34,181	

See the note to the required supplementary information.

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY OF NAPA COUNTY
NOTE TO THE REQUIRED SUPPLEMENTARY INFORMATION
FOR THE FISCAL YEAR ENDED JUNE 30, 2023

NOTE 1 – STEWARDSHIP, COMPLIANCE, AND ACCOUNTABILITY

The In-Home Supportive Services Public Authority of Napa County (the Authority) prepares and legally adopts a final budget on or before August 30th of each fiscal year. The Authority operation, commencing July 1st, is governed by the proposed budget, adopted by the Governing Board in June of the prior fiscal year.

After the budget is approved, the appropriations can be added to, subtracted from, or changed only by Authority resolution. All such changes must be within the revenues and reserves estimated as available in the final budget or within revised revenue estimates as approved by the Authority.

An operating budget is adopted each fiscal year on the modified accrual basis of accounting. Additionally, encumbrance accounting is utilized to assure effective budgetary control. Encumbrances outstanding at fiscal year-end represent the estimated amount of the expenditures ultimately to result if the unperformed contracts in process at fiscal year-end are completed or purchased commitments satisfied. Such fiscal year-end encumbrances are reported as reservations of fund balance and do not constitute expenditures or liabilities because the commitments will be honored during the subsequent fiscal year and included in the subsequent fiscal year's budget. Unencumbered appropriations lapse at fiscal year-end.

The legal level of budgetary control (the level on which expenditures may not legally exceed appropriations) is at the object level. Object levels of expenditures include: salaries and employee benefits, and services and supplies.

The budget is adopted on a basis consistent with accounting principles generally accepted in the United States of America.

OTHER REPORT

INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF BASIC FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

Board of Supervisors of Napa County
Acting as the Governing Board of
In-Home Supportive Services Public
Authority of Napa County
Napa, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities and the general fund of the In-Home Supportive Services Public Authority of Napa County (the Authority), as of and for the fiscal year ended June 30, 2023, and the related notes to the basic financial statements, which collectively comprise the Authority's basic financial statements, and have issued our reported dated January 4, 2024.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Authority's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness the Authority's internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

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FRESNO
10 River Park Place East, Suite 208
Fresno, CA 93720
559-476-3592

STOCKTON
2423 West March Lane, Suite 202
Stockton, CA 95207
209-451-4833

REGISTERED with the Public Company Accounting Oversight Board and MEMBER of the American Institute of Certified Public Accountants

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Authority's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of This Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Authority's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Authority's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

BROWN ARMSTRONG
ACCOUNTANCY CORPORATION

Brown Armstrong
Accountancy Corporation

Bakersfield, California
January 4, 2024

Board of Supervisors of Napa County
Acting as the Governing Board of
In-Home Supportive Services Public
Authority of Napa County
Napa, California

We have audited the financial statements of the governmental activities and the major fund of the In-Home Supportive Services Public Authority of Napa County (the Authority) for the fiscal year ended June 30, 2023. Professional standards require that we provide you with information about our responsibilities under auditing standards generally accepted in the United States of America and *Government Auditing Standards* as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated January 4, 2024. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Matters

Qualitative Aspects of Accounting Practices
Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the Authority are described in Note 1 to the financial statements. As described in Note 1 to the financial statements, the Authority adopted Governmental Accounting Standards Board (GASB) Statement No. 91, *Conduit Debt Obligations*; GASB Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*; GASB Statement No. 96, *Subscription-Based Information Technology Arrangements*; and GASB Statement No. 99, *Omnibus 2022*, during the fiscal year ended June 30, 2023. These GASB Statements do not impact the financial statements or disclosures of the Authority as the Authority does not have the types of transactions covered by these standards. We noted no transactions entered into by the Authority during the fiscal year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. There were no sensitive estimates.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit
We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements
Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to each opinion unit's financial statements taken as a whole.

Disagreements with Management
For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations
We have requested certain representations from management that are included in the management representation letter dated January 4, 2024.

Management Consultations with Other Independent Accountants
In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Authority's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues
We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each fiscal year prior to retention as the Authority's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Matters

We applied certain limited procedures to Management's Discussion and Analysis and the Budgetary Comparison Schedule, which are required supplementary information (RSI) that supplement the basic financial statements. Our procedures consisted of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We did not audit the RSI and do not express an opinion or provide any assurance on the RSI.

Restriction on Use

This information is intended solely for the information and use of Board of Supervisors and management of the Authority and is not intended to be, and should not be, used by anyone other than these specified parties.

BROWN ARMSTRONG
ACCOUNTANCY CORPORATION

Brown Armstrong
Accountancy Corporation

Bakersfield, California
January 4, 2024

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 23-1589

TO: Members of Governing Board

FROM: Christopher Silke - District Engineer

REPORT BY: Sarah Geiss - Staff Services Analyst II

SUBJECT: Budget Amendment for NBRID Debt Service Sub-Division

RECOMMENDATION

Approve a Budget Amendment for Fiscal Year 2023-24 Napa Berryessa Resort Improvement (NBRID) Debt Service totaling $356,621 to pay the debt service for the Series A (Wastewater System Improvements) and Series B (Water System Improvements) Bonds. (Fiscal Impact: $356,621 expense; NBRID-Debt Service Fund; Not budgeted; Mandatory)
[4/5 vote required]

BACKGROUND

DIVISION 52410, Sub-Division 5241000 NBRID DEBT SERVICE

Total appropriations requested totals $356,621.

In Fiscal Year 2012-13, the District successfully issued $10,883,600 in Limited Obligation Improvement Bonds, comprised of $7,959,728 in Series A Bonds (Wastewater System Improvements) and $2,923,728 in Series B Bonds (Water System Improvements). The appropriations requested are to pay the debt service currently scheduled for Fiscal Year 2023-24. Additionally, Fiscal Year 2023-24 will be the tenth year of assessment collections made from District residents to repay the debt service for the bond.

Requested Actions:
1. Approval of Budget Amendment for the following:
   a. Increase appropriations by $147,000 to Principal on Other Debt (account 54105, Sub-division 5241000);
   b. Increase appropriations by $209,621 to Interest on Other Debt (account 54315, Sub-division 5241000) offset by increase of revenue;
   c. Increase revenue by $4,600 to Penalties/Costs-Delinquent Taxes (account 44400, Subdivision 5241000); and
   d. Increase revenue by $356,621 to Special Assessments (account 46700, Sub-division 5241000).

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	No
Future fiscal impact:	Future Debt service payments will be budgeted
Consequences if not approved:	Without the budget adoption the District will be unable to process principal and interest payments.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NBRID Bonds Outstanding
June 30, 2018

Improvement Bond

The following table sets forth the debt service requirements for the NBRID Series A & B Bonds

DEBT SERVICE REQUIREMENTS

	Series A - Sewer - 5241000			Series B - Water - 5241002			Total	
Date	Principal	Interest	Balance	Principal	Interest	Balance	Principal	Interest
			$ 7,959,872			2,923,728		
9/2/2014	$ 110,872	137,357.50	7,849,000	40,728	45,683.25	2,883,000	151,600	183,041
3/2/2015		137,357.50	7,849,000		45,046.88	2,883,000		182,404
9/2/2015	114,000	118,300.57	7,735,000	42,000	45,046.88	2,841,000	156,000	163,347
3/2/2016	16,431	118,711.38	7,718,569		44,390.63	2,841,000	16,431	163,102
9/2/2016	118,000	120,602.64	7,600,569	43,000	44,390.63	2,798,000	161,000	164,993
3/2/2017	27,205	118,758.89	7,573,364	9,843	43,718.75	2,788,157	37,048	162,478
9/2/2017	122,000	118,333.81	7,451,364	45,000	43,564.96	2,743,157	167,000	161,899
3/2/2018		116,427.56	7,451,364		42,861.83	2,743,157		159,289
9/2/2018	126,000	116,427.56	7,325,364	46,000	42,861.83	2,697,157	172,000	159,289
3/2/2019		114,458.81	7,325,364		42,143.08	2,697,157		156,602
9/2/2019	130,000	114,458.81	7,195,364	48,000	42,143.08	2,649,157	178,000	156,602
3/2/2020		112,427.56	7,195,364		41,393.08	2,649,157		153,821
9/2/2020	134,000	112,427.56	7,061,364	49,000	41,393.08	2,600,157	183,000	153,821
3/2/2021		110,333.81	7,061,364		40,627.46	2,600,157		150,961
9/2/2021	138,000	110,333.81	6,923,364	51,000	40,627.46	2,549,157	189,000	150,961
3/2/2022		108,177.56	6,923,364		39,830.58	2,549,157		148,008
9/2/2022	142,000	108,177.56	6,781,364	52,000	39,830.58	2,497,157	194,000	148,008
3/2/2023		105,958.81	6,781,364		39,018.08	2,497,157		144,977
9/2/2023	147,000	105,958.81	6,634,364	54,000	39,018.08	2,443,157	201,000	144,977
3/2/2024		103,661.94	6,634,364		38,174.33	2,443,157		141,836
9/2/2024	152,000	103,661.94	6,482,364	56,000	38,174.33	2,387,157	208,000	141,836
3/2/2025		101,286.94	6,482,364		37,299.33	2,387,157		138,586
9/2/2025	156,000	101,286.94	6,326,364	58,000	37,299.33	2,329,157	214,000	138,586
3/2/2026		98,849.44	6,326,364		36,393.08	2,329,157		135,243
9/2/2026	161,000	98,849.44	6,165,364	59,000	36,393.08	2,270,157	220,000	135,243
3/2/2027		96,333.81	6,165,364		35,471.21	2,270,157		131,805
9/2/2027	167,000	96,333.81	5,998,364	61,000	35,471.21	2,209,157	228,000	131,805
3/2/2028		93,724.44	5,998,364		34,518.08	2,209,157		128,243
9/2/2028	172,000	93,724.44	5,826,364	63,000	34,518.08	2,146,157	235,000	128,243
3/2/2029		91,036.94	5,826,364		33,533.71	2,146,157		124,571
9/2/2029	177,000	91,036.94	5,649,364	65,000	33,533.71	2,081,157	242,000	124,571
3/2/2030		88,271.31	5,649,364		32,518.08	2,081,157		120,789
9/2/2030	183,000	88,271.31	5,466,364	67,000	32,518.08	2,014,157	250,000	120,789
3/2/2031		85,411.94	5,466,364		31,471.21	2,014,157		116,883
9/2/2031	189,000	85,411.94	5,277,364	69,000	31,471.21	1,945,157	258,000	116,883
3/2/2032		82,458.81	5,277,364		30,393.08	1,945,157		112,852
9/2/2032	195,000	82,458.81	5,082,364	72,000	30,393.08	1,873,157	267,000	112,852
3/2/2033		79,411.94	5,082,364		29,268.08	1,873,157		108,680
9/2/2033	200,000	79,411.94	4,882,364	74,000	29,268.08	1,799,157	274,000	108,680
3/2/2034		76,286.94	4,882,364		28,111.83	1,799,157		104,399
9/2/2034	207,000	76,286.94	4,675,364	76,000	28,111.83	1,723,157	283,000	104,399
3/2/2035		73,052.56	4,675,364		26,924.33	1,723,157		99,977
9/2/2035	214,000	73,052.56	4,461,364	79,000	26,924.33	1,644,157	293,000	99,977
3/2/2036		69,708.81	4,461,364		25,689.96	1,644,157		95,399
9/2/2036	221,000	69,708.81	4,240,364	81,000	25,689.96	1,563,157	302,000	95,399
3/2/2037		66,255.69	4,240,364		24,424.33	1,563,157		90,680
9/2/2037	227,000	66,255.69	4,013,364	83,000	24,424.33	1,480,157	310,000	90,680
3/2/2038		62,708.81	4,013,364		23,127.46	1,480,157		85,836
9/2/2038	235,000	62,708.81	3,778,364	86,000	23,127.46	1,394,157	321,000	85,836
3/2/2039		59,036.94	3,778,364		21,783.71	1,394,157		80,821
9/2/2039	242,000	59,036.94	3,536,364	89,000	21,783.71	1,305,157	331,000	80,821
3/2/2040		55,255.69	3,536,364		20,393.08	1,305,157		75,649
9/2/2040	250,000	55,255.69	3,286,364	92,000	20,393.08	1,213,157	342,000	75,649
3/2/2041		51,349.44	3,286,364		18,955.58	1,213,157		70,305
9/2/2041	258,000	51,349.44	3,028,364	94,000	18,955.58	1,119,157	352,000	70,305
3/2/2042		47,318.19	3,028,364		17,486.83	1,119,157		64,805
9/2/2042	266,000	47,318.19	2,762,364	97,000	17,486.83	1,022,157	363,000	64,805
3/2/2043		43,161.94	2,762,364		15,971.21	1,022,157		59,133
9/2/2043	275,000	43,161.94	2,487,364	101,000	15,971.21	921,157	376,000	59,133
3/2/2044		38,865.06	2,487,364		14,393.08	921,157		53,258
9/2/2044	283,000	38,865.06	2,204,364	104,000	14,393.08	817,157	387,000	53,258
3/2/2045		34,443.19	2,204,364		12,768.08	817,157		47,211
9/2/2045	292,000	34,443.19	1,912,364	107,000	12,768.08	710,157	399,000	47,211
3/2/2046		29,880.69	1,912,364		11,096.21	710,157		40,977

Improvement Bond

The following table sets forth the debt service requirements for the NBRID Series A & B Bonds

DEBT SERVICE REQUIREMENTS

	Series A - Sewer - 5241000			Series B - Water - 5241002			Total	
Date	Principal	Interest	Balance	Principal	Interest	Balance	Principal	Interest
			$ 7,959,872			2,923,728		
9/2/2046	301,000	29,880.69	1,611,364	111,000	11,096.21	599,157	412,000	40,977
3/2/2047		25,177.56	1,611,364		9,361.83	599,157		34,539
9/2/2047	311,000	25,177.56	1,300,364	114,000	9,361.83	485,157	425,000	34,539
3/2/2048		20,318.19	1,300,364		7,580.58	485,157		27,899
9/2/2048	320,000	20,318.19	980,364	118,000	7,580.58	367,157	438,000	27,899
3/2/2049		15,318.19	980,364		5,736.83	367,157		21,055
9/2/2049	331,000	15,318.19	649,364	122,000	5,736.83	245,157	453,000	21,055
3/2/2050		10,146.31	649,364		3,830.58	245,157		13,977
9/2/2050	341,000	10,146.31	308,364	126,000	3,830.58	119,157	467,000	13,977
3/2/2051		4,818.19	308,364		1,861.83	119,157		6,680
9/2/2051	308,364	4,818.19	0	119,157	1,861.83	(0)	427,521	6,680
Payments to-date	(764,508)	(1,443,623)		(274,571)	(523,245)		(1,039,079)	(1,966,867)
Balance	**$ 7,195,364**	**$ 4,168,468**		**$ 2,649,157**	**$ 1,537,420**		**9,844,521**	**5,705,888**
Total:	7,959,872.00	5,612,090.26	-	2,923,728.00	2,060,665.38		10,883,600.00	7,672,755.64
					18,556,355.64			18,556,355.64
USDA, Rural Development, Rural Utilities Service Loan								-
Interest 3.125% per annum								
Loan Payoff, Gatt & Peterson. See R&E for detail								

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
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Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-64

TO: Board of Supervisors

FROM: Tracy A. Schulze - Auditor-Controller

REPORT BY: Georgina Panganiban - Accounting Manager

SUBJECT: Napa County Local Transportation Fund Audit Report for Fiscal Year Ended June 30, 2023

RECOMMENDATION

Accept and file the Napa County Local Transportation Fund financial audit report for fiscal year ended June 30, 2023. (No Fiscal Impact, Mandatory)

BACKGROUND

Brown Armstrong Accountancy Corporation has audited the financial statements of the Napa County Local Transportation Fund (LTF) for the year ended June 30, 2023. These statements are finalized in conjunction with the financial audit of the Napa Valley Transportation Authority (NVTA). The LTF provides NVTA funding for specific projects approved by the Metropolitan Transit Commission (MTC).

The audit report presented today was prepared in accordance with generally accepted auditing standards (GAAP) and in compliance with California Code of Regulations Title 21 Sections 6666 and 6667 as applicable. The report has an unqualified (clean) opinion, with no management comments. Once accepted, the report will be submitted to MTC.

Requested Action: Accept and file the report.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	No

Future fiscal impact:	None
Consequences if not approved:	The County would not be in compliance with the California Code of Regulations

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY
LOCAL TRANSPORTATION FUND

FINANCIAL STATEMENTS
AND
INDEPENDENT AUDITOR'S REPORT

FOR THE FISCAL YEAR ENDED
JUNE 30, 2023

NAPA COUNTY
LOCAL TRANSPORTATION FUND
JUNE 30, 2023

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INDEPENDENT AUDITOR'S REPORT

To the Honorable Members of the
Board of Supervisors of Napa County
Napa, California

Report on the Audit of the Financial Statements

Opinions

We have audited the accompanying financial statements of the Local Transportation Fund (the Fund) of Napa County (the County), as of and for the fiscal year ended June 30, 2023, and the related notes to the financial statements, which collectively comprise the Fund's basic financial statements as listed in the table of contents. The June 30, 2022 summarized comparative information has been derived from the 2022 financial statements and is included for additional analysis only.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the Fund of the County, as of June 30, 2023, and the respective changes in financial position thereof for the fiscal year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the County and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Emphasis of Matter

As discussed, in Note 1, the financial statements present only the Fund and do not purport, and do not, present fairly the financial position of the County as of June 30, 2023, or the changes in its financial position for the fiscal year then ended in accordance with accounting principles generally accepted in the United States of America. Our opinion is not modified with respect to this matter.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

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STOCKTON
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Stockton, CA 95207
209-451-4833

REGISTERED with the Public Company Accounting Oversight Board and MEMBER of the American Institute of Certified Public Accountants

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Fund's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the County's internal control relating to the Fund. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Fund's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Supplementary Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Fund's basic financial statements. The Schedule of Allocations and Expenditures is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. The information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the Schedule of Allocations and Expenditures is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated December 28, 2023, on our consideration of the County's internal control over financial reporting relating to the Fund and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance relating to the Fund and the results of that testing, and not to provide an opinion on the effectiveness of the County's internal control over financial reporting or on compliance relating to the Fund. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the County's internal control over financial reporting and compliance relating to the Fund.

BROWN ARMSTRONG
ACCOUNTANCY CORPORATION

Brown Armstrong
Accountancy Corporation

Bakersfield, California
December 28, 2023

NAPA COUNTY
LOCAL TRANSPORTATION FUND
STATEMENT OF ASSETS AND LIABILITIES
JUNE 30, 2023
(WITH COMPARATIVE TOTALS)

	2023	2022
Assets		
Cash and Investments	$ 5,617,427	$ 11,366,276
Due from Other Governments	3,534,631	163,517
Total Assets	$ 9,152,058	$ 11,529,793
Liabilities		
Due to Other Governments	$ 9,152,058	$ 11,529,793
Total Liabilities	$ 9,152,058	$ 11,529,793

The accompanying notes are an integral part of these financial statements.

NAPA COUNTY
LOCAL TRANSPORTATION FUND
STATEMENT OF CHANGES IN ASSETS AND LIABILITIES
FOR THE FISCAL YEAR ENDED JUNE 30, 2023
(WITH COMPARATIVE TOTALS)

	2023	2022
Additions		
Sales Tax	$ 12,097,904	$ 11,275,897
Interest	51,540	72,889
Returned Allocations	3,534,631	163,517
Total Additions	15,684,075	11,512,303
Deductions		
County of Napa	60,490	56,380
City of Calistoga	-	131,309
City of American Canyon	98,454	-
Napa Valley Transportation Authority	17,449,679	8,437,473
Metropolitan Transportation Commission	453,187	392,751
Total Deductions	18,061,810	9,017,913
Change in Assets and Liabilities	(2,377,735)	2,494,390
Due to Other Governments - Beginning of Year	11,529,793	9,035,403
Due to Other Governments - End of Year	$ 9,152,058	$ 11,529,793

The accompanying notes are an integral part of these financial statements.

NAPA COUNTY
LOCAL TRANSPORTATION FUND
NOTES TO THE FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED JUNE 30, 2023

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The financial statements of the Napa County Local Transportation Fund (the Fund) are prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). The Fund applies all relevant Governmental Accounting Standards Board (GASB) pronouncements.

A. The Reporting Entity

Napa County (the County) receives sales tax revenues generated within the County directly from the State Board of Equalization. These sales tax revenues are used for specified transportation and road improvement projects within the County. The Metropolitan Transportation Commission, as the regional transportation authoritative entity, authorizes and approves how these funds are to be spent. Generally, these funds are restricted to public transportation, bike path, and street and road improvement projects.

The financial statements are intended to present the financial position and changes in financial position of only those transactions attributable to the Fund and are not intended to present fairly the financial position and results of operations of the County in conformity with GAAP.

B. Basis of Presentation

Government-Wide Financial Statements

GASB Statement No. 34 implemented an additional set of statements called the government-wide financial statements consisting of the Statement of Net Position and the Statement of Activities. It also implemented a section entitled “Management’s Discussion and Analysis” (MD&A). Since these provisions of GASB Statement No. 34 apply to legally created state and local governmental entities and not to reports on individual funds such as this one, the MD&A, government-wide Statement of Net Position, and government-wide Statement of Activities have not been presented or included in these financial statements.

Fund Financial Statements

The accounts of the Fund are organized on the basis of funds, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund equity, revenues, and expenditures or expenses, as appropriate. Government resources are allocated to and accounted for in individual funds based upon the purposes for which they are to be spent and the means by which spending activities are controlled.

The Fund is a fiduciary fund specifically categorized as a Custodial Fund. Custodial Funds account for assets held by the County as an agent for others.

C. Basis of Accounting

Custodial funds are used to report resources held by the reporting government in a purely custodial capacity (assets equal liabilities). The accrual basis of accounting is used to determine the appropriate asset and liability accounts. The additions and deletions as provided in the supplemental information section are according to Metropolitan Transportation Commission’s requirements.

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

D. Use of Estimates

The preparation of the financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amount of revenue and expenses during the reporting period. Actual results could differ from these estimates.

NOTE 2 – DUE FROM OTHER GOVERNMENTS

The Fund allocates monies to the Napa Valley Transportation Authority (NVTA) for transit purposes by way of an allocation instruction from the Metropolitan Transportation Commission. According to the provisions of Section 6634 of the Transportation Development Act, the NVTA is only eligible to receive Fund allocations to cover its actual operating cost, less state, federal, and other local grants; fare revenues; and other support. For the fiscal year ended June 30, 2023, the Fund allocations made to the NVTA resulted in the NVTA receiving Fund allocations of $3,534,631 in excess of its operating cost and this amount was recorded as such on these financial statements.

NOTE 3 – DUE TO OTHER GOVERNMENTS

The Fund has been appropriately classified as a Custodial Fund and any assets in excess of liabilities are classified as due to other governments since the County acts as a caretaker for the funds which are due to various governmental agencies within the County. The funds are allocated and disbursed in conformance with allocation instructions from the Metropolitan Transportation Commission.

NOTE 4 – CASH AND INVESTMENTS

The Fund maintains all of its cash and investments with the County Treasurer in a cash and investment pool. On a quarterly basis, the Treasurer allocates interest to participants based upon their average daily balances. Required disclosure information regarding the categorization of investments and other deposit and investment risk disclosures can be found in the County's financial statements. The County's financial statements may be obtained by contacting the County's Auditor-Controller's office at 1195 Third Street, Room B-10, Napa, CA 94559. The County Treasury Oversight Committee oversees the Treasurer's compliance with the County investment policy.

Required disclosures for the Fund's deposit and investment risks at June 30, 2023, are as follows:

Credit risk	Not rated
Custodial risk	Not applicable
Concentration of credit risk	Not applicable
Interest rate risk	1.11 years weighted average maturity

Investments held in the County's investment pool are available on demand and are stated at cost plus accrued interest, which approximates fair value. The County has no deposit or investment policy that addresses a specific type of risk.

NOTE 5 – SUBSEQUENT EVENTS

Subsequent events have been evaluated through December 28, 2023, which is the date that the financial statements were available to be issued. There were no subsequent events identified by management which would require disclosure in these financial statements.

SUPPLEMENTAL INFORMATION

NAPA COUNTY
LOCAL TRANSPORTATION FUND
SCHEDULE OF ALLOCATIONS AND EXPENDITURES
FOR THE FISCAL YEAR ENDED JUNE 30, 2023

Entity/Public Utilities Code (PUC) Section	Allocations Outstanding June 30, 2022	2022/23 Allocated	2022/23 Expended	2022/23 Expired	Allocations Outstanding June 30, 2023
County of Napa					
99233.2	$ -	$ 60,490	$ 60,490	$ -	$ -
Total	-	60,490	60,490	-	-
City of American Canyon					
99233.3	98,454	53,000	98,454	53,000	-
Total	98,454	53,000	98,454	53,000	-
City of Calistoga					
99233.3	-	150,000	-	-	150,000
Total	-	150,000	-	-	150,000
City of St. Helena					
99233.3	50,000	50,000	-	50,000	50,000
Total	50,000	50,000	-	50,000	50,000
Town of Yountville					
99233.3	160,000	-	-	-	160,000
Total	160,000	-	-	-	160,000
Napa Valley Transportation Authority (NVTA)					
99233.7/999275	-	589,800	472,906	-	116,894
99260A	6,350,374	7,075,466	12,395,083	-	1,030,757
99400C	-	1,219,490	1,219,490	-	-
99400D	-	3,362,200	3,362,200	-	-
Total	6,350,374	12,246,956	17,449,679	-	1,147,651
Metropolitan Transportation Commission					
99233.2	29,760	423,427	453,187	-	-
Total	29,760	423,427	453,187	-	-
Grand Total	$ 6,688,588	$ 12,983,873	$ 18,061,810	$ 103,000	$ 1,507,651

OTHER REPORTS

INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF THE FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH *GOVERNMENT AUDITING STANDARDS*

To the Honorable Members of the
Board of Supervisors of Napa County
Napa, California

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the Local Transportation Fund (the Fund) of Napa County (the County), as of and for the fiscal year ended June 30, 2023, and the related notes to the financial statements, which collectively comprise the Fund's basic financial statements, and have issued our report thereon dated December 28, 2023.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the County's internal control over financial reporting (internal control) relating to the Fund as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the County's internal control relating to the Fund. Accordingly, we do not express an opinion on the effectiveness of the County's internal control relating to the Fund.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

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661-324-4971

FRESNO
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STOCKTON
2423 West March Lane, Suite 202
Stockton, CA 95207
209-451-4833

REGISTERED with the Public Company Accounting Oversight Board and MEMBER of the American Institute of Certified Public Accountants

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Fund's financial statements are free from material misstatement, we performed tests of the County's compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of This Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the County's internal control or on compliance relating to the Fund. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the County's internal control and compliance relating to the Fund. Accordingly, this communication is not suitable for any other purpose.

BROWN ARMSTRONG
ACCOUNTANCY CORPORATION

Brown Armstrong
Accountancy Corporation

Bakersfield, California
December 28, 2023

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE OVER FINANCIAL REPORTING BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH THE STATUTES, RULES, AND REGULATIONS OF THE CALIFORNIA TRANSPORTATION DEVELOPMENT ACT AND THE ALLOCATION INSTRUCTIONS AND RESOLUTIONS OF THE METROPOLITAN TRANSPORTATION COMMISSION

To the Honorable Members of the
Board of Supervisors of Napa County
Napa, California

We have audited the financial statements of the Local Transportation Fund (the Fund) of Napa County (the County), as of and for the fiscal year ended June 30, 2023, and have issued our report thereon dated December 28, 2023. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Compliance

As part of obtaining reasonable assurance about whether the Fund's financial statements are free of material misstatement, we performed tests of the County's compliance with certain provisions of laws, regulations, contracts, and grants, noncompliance with which could have a direct and material effect on the financial statements. Additionally, we performed tests to determine that allocations made and expenditures paid by the Fund were made in accordance with the allocation instructions and resolutions of the Metropolitan Transportation Commission (MTC) and in conformance with the California Transportation Development Act (TDA). Specifically, we performed the tasks identified in the California Code of Regulations Sections 6666 and 6667 that are applicable to the Fund. Based on these procedures, we noted no instances of noncompliance with applicable statutes, rules, and regulations of the TDA and the allocation instructions and resolutions of the MTC.

Restriction on Use

This report is intended solely for the information and use of Napa County management, the Metropolitan Transportation Commission, the California Department of Transportation, and the California State Controller's Office and is not intended to be, and should not be, used by anyone other than these specified parties.

BROWN ARMSTRONG
ACCOUNTANCY CORPORATION

Brown Armstrong
Accountancy Corporation

Bakersfield, California
December 28, 2023

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4200 Truxtun Avenue, Suite 300
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REGISTERED with the Public Company Accounting Oversight Board and MEMBER of the American Institute of Certified Public Accountants

To the Honorable Members of the
Board of Supervisors of Napa County
Napa, California

We have audited the financial statements of the Napa County Local Transportation Fund (LTF) as of and for the fiscal year ended June 30, 2023. Professional standards require that we provide you with information about our responsibilities under auditing standards generally accepted in the United States of America and *Government Auditing Standards*, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated December 28, 2023. Professional standards also require that we communicate to you the following information related to our audit.

Significant Audit Matters

Qualitative Aspects of Accounting Practices
Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by the LTF are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the fiscal year ended June 30, 2023. We noted no transactions entered into by the LTF during the fiscal year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected. There were no sensitive estimates.

The financial statement disclosures are neutral, consistent, and clear.

Difficulties Encountered in Performing the Audit
We encountered no significant difficulties in dealing with management in performing and completing our audit.

Corrected and Uncorrected Misstatements
Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. There were no such misstatements.

Disagreements with Management
For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditor's report. We are pleased to report that no such disagreements arose during the course of our audit.

Management Representations
We have requested certain representations from management that are included in the management representation letter dated December 28, 2023.

Management Consultations with Other Independent Accountants
In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the LTF's financial statements or a determination of the type of auditor's opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Other Audit Findings or Issues
We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each fiscal year prior to retention as the LTF's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Other Matters

We were engaged to report on the Schedule of Allocations and Expenditures, which accompanies the financial statements but is not required supplementary information (RSI). With respect to this supplementary information, we made certain inquiries of management and evaluated the form, content, and methods of preparing the information to determine that the information complies with accounting principles generally accepted in the United States of America, the method of preparing it has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We compared and reconciled the supplementary information to the underlying accounting records used to prepare the financial statements or to the financial statements themselves.

Restriction on Use

This information is intended solely for the information and use of the Board of Supervisors and management of the LTF and is not intended to be, and should not be, used by anyone other than these specified parties.

BROWN ARMSTRONG
ACCOUNTANCY CORPORATION

Brown Armstrong
Accountancy Corporation

Bakersfield, California
December 28, 2023

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-65

TO: Board of Supervisors

FROM: Tracy A. Schulze - Auditor-Controller

REPORT BY: Georgina Panganiban - Accounting Manager

SUBJECT: GANN Appropriation Limit Agreed-Upon Procedure Reports for Fiscal Years Ended June 30, 2022 and June 30, 2023

RECOMMENDATION

Accept and file the GANN Appropriation Limit agreed-upon procedure reports for fiscal years ended June 30, 2022 and June 30, 2023. (No Fiscal Impact, Mandatory)

BACKGROUND

Section 1.5 of Article XIIIB of the California Constitution requires the annual calculation of appropriation limits for the County be reviewed as part of the financial audit. The County contracted with Brown Armstrong Accountancy Corporation to review the calculations. The calculations for fiscal years 2021-22 and 2022-23 were confirmed with no exceptions or findings.

Requested Action: Accept and file the Report

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	No
Future fiscal impact:	None
Consequences if not approved:	The County would not be in compliance with the California Constitution

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California

Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

To the Board of Supervisors
County of Napa, California

We have performed the procedures enumerated below, on evaluating management's assertion about the County of Napa's (the County) compliance with requirements of Section 1.5 of Article XIIIB of the California Constitution during the fiscal year ended June 30, 2022, included in the accompanying Appropriations Limit Worksheet. Management is responsible for the County's compliance with those requirements. The County has agreed to and acknowledged that the procedures performed are appropriate to meet the intended purpose. This report may not be suitable for any other purpose. The procedures performed may not address all the items of interest to a user of this report and may not meet the needs of all users of this report and, as such, users are responsible for determining whether the procedures performed are appropriate for their purposes.

The procedures and associated findings are as follows:

1) We obtained the County's completed Appropriations Limit Worksheet and determined that the limit and annual adjustment factors were adopted by resolution of the Board of Supervisors. We also determined that the population and inflation options were selected by a recorded vote of the Board of Supervisors. We noted no exceptions as a result of this procedure.
2) We agreed the June 30, 2022, Appropriations Limit presented in the accompanying Appropriations Limit Worksheet to the June 30, 2022, Appropriations Limit as adopted by the Board of Supervisors. We noted no exceptions as a result of this procedure.
3) We agreed the fiscal year 2022 information presented in the accompanying Appropriations Limit Worksheet to the supporting worksheets designed and prepared by the County. We noted no exceptions as a result of this procedure.
4) For the accompanying Appropriations Limit Worksheet, we added the June 30, 2021, limit to the total fiscal year 2022 annual adjustment and agreed the resulting amount to the June 30, 2022, limit. We noted no exceptions as a result of this procedure.

We were engaged by the County to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not, conduct an examination or review engagement, the objective of which would be the expression of an opinion or conclusion, respectively, on management's assertion. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the County and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of management and the Board of Supervisors of the County of Napa, California, and is not intended to be, and should not be, used by anyone other than these specified parties.

BROWN ARMSTRONG
ACCOUNTANCY CORPORATION

Brown Armstrong
Accountancy Corporation

Bakersfield, California
March 10, 2023

COUNTY OF NAPA
APPROPRIATIONS LIMIT WORKSHEET
JUNE 30, 2022

Appropriations limit at June 30, 2021		$ 2,210,978,679
Adjustment factors:		
Population factor (percent change in population within the County of Napa and all counties having borders contiguous to the County of Napa)	1.0022	
Inflation factor (percent change in California per capital personal income)	1.1723	
Total adjustment factor		1.1749
Annual adjustment		386,600,301
Appropriations limit at June 30, 2022		$ 2,597,578,980

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

To the Board of Supervisors
County of Napa, California

We have performed the procedures enumerated below, on evaluating management's assertion about the County of Napa's (the County) compliance with requirements of Section 1.5 of Article XIIIB of the California Constitution during the fiscal year ended June 30, 2023, included in the accompanying Appropriations Limit Worksheet. Management is responsible for the County's compliance with those requirements. The County has agreed to and acknowledged that the procedures performed are appropriate to meet the intended purpose. This report may not be suitable for any other purpose. The procedures performed may not address all the items of interest to a user of this report and may not meet the needs of all users of this report and, as such, users are responsible for determining whether the procedures performed are appropriate for their purposes.

The procedures and associated findings are as follows:

1) We obtained the County's completed Appropriations Limit Worksheet and determined that the limit and annual adjustment factors were adopted by resolution of the Board of Supervisors. We also determined that the population and inflation options were selected by a recorded vote of the Board of Supervisors. We noted no exceptions as a result of this procedure.
2) We agreed the June 30, 2023, Appropriations Limit presented in the accompanying Appropriations Limit Worksheet to the June 30, 2023, Appropriations Limit as adopted by the Board of Supervisors. We noted no exceptions as a result of this procedure.
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We were engaged by the County to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to, and did not, conduct an examination or review engagement, the objective of which would be the expression of an opinion or conclusion, respectively, on management's assertion. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of the County and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of management and the Board of Supervisors of the County of Napa, California, and is not intended to be, and should not be, used by anyone other than these specified parties.

BROWN ARMSTRONG
ACCOUNTANCY CORPORATION

Brown Armstrong
Accountancy Corporation

Bakersfield, California
December 15, 2023

COUNTY OF NAPA
APPROPRIATIONS LIMIT WORKSHEET
JUNE 30, 2023

Appropriations limit at June 30, 2022		$ 2,597,578,980
Adjustment factors*:		
Population factor (percent change in population within the County of Napa and all counties having borders contiguous to the County of Napa)	0.9980	
Inflation factor (percent change in California per capital personal income)	1.0941	
Total adjustment factor		1.0919
Annual adjustment		238,693,689
Appropriations limit at June 30, 2023		$ 2,836,272,669

*All adjustment factors are rounded to the 4th decimal.

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
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Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-95

TO: Board of Supervisors

FROM: Tracy Schulze, Auditor-Controller

REPORT BY: Susan MacDonald, Internal Audit

SUBJECT: Donations Report for the Quarter-Ended December 31, 2023

RECOMMENDATION

Accept and file the quarterly report of cash and non-cash donations received for the quarter-ended December 31, 2023 (Fiscal Impact: Increased Revenues, Discretionary).

BACKGROUND

Cash and non-cash donations in the amount of $592,103 were received for the quarter-ended December 31, 2023. A detailed breakdown of all known donations received by Napa County Departments is included in the attached correspondence and Table A.

The cash donations accepted on behalf of the Board of Supervisors were recorded into the Donations revenue account with the County Treasury.

On August 1, 2005, the Board of Supervisors adopted Resolution 05-40 authorizing the Auditor-Controller to accept donations that are equal to or less than $1,000 on behalf of the Board of Supervisors.

The Resolution of March 2005 does not supersede the following:

1. Board of Supervisors Resolution No. 99-56, revised May 24, 2005, for Napa County Library to accept donations from various donors and the Friends of the Library
2. Board of Supervisors Resolution No. 06-120, adopted on June 20, 2006 for the Health and Human Services Agency (HHSA) to accept donations on behalf of the Homeless Shelter
3. Board of Supervisors Resolution No. 08-171, adopted December 9, 2008, for the Health and Human Services Agency (HHSA) to accept donations on behalf of the Children's Recovery Center (CRC) and Child Welfare Services Division (CWS) (Resolution 08-171)
4. Board of Commissioners Resolution No. 07-05 (NCHA), adopted August 21, 2007 for the Napa County Housing Authority to accept and disburse donations

Requested Action: Accept and file the report.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Board approval is required to accept donations exceeding limits cited in Resolutions.
Is the general fund affected?	Yes
Future fiscal impact:	Increased Revenue
Consequences if not approved:	Funds will be returned to the donors.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

A Tradition of Stewardship
A Commitment to Service

Auditor-Controller

1195 Third Street · Room B10
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4551
Fax: (707) 226-9065

Tracy A. Schulze
Auditor-Controller

January 09, 2024

Board of Supervisors
1195 Third Street, Room 301
Napa, CA 95449

Table A (attached) provides a listing of donations known to be received by Napa County Departments from October 1, 2023 to December 31, 2023. The information is based on an analysis of the general ledger, Board actions, and notifications sent to the Auditor-Controller's Office.

Cash Donations Reported to Auditor Controller's Office	$	8,590
Cash Donations Reported to Board of Supervisors		61,600
Cash Donations to be Reported to BOS by Other Departments		521,913
Total Quarterly Cash Donations Reported	**$**	**592,103**
Total Non-Cash Donations Reported to Auditor Controller's Office	**$**	**-**
Total Quarterly Donations Reported	**$**	**592,103**

Respectfully,

Tracy A. Schulze, CPA
Auditor-Controller

Table A

Donations Reporting
For the Quarter Ended December 31, 2023

Donations Reported to Auditor-Controller's Office	Amount
Animal Shelter	$ 8,590
Subtotal	8,590
Donations Reported to BOS by Other Departments[1]	
Animal Shelter	
BOS Agenda # 23-1758 11/07/2023	1,600
County Library	
BOS Agenda # 23-1980 12/19/2023	60,000
Subtotal	61,600
Donations to be Reported to BOS by Other Departments[1]	
Animal Shelter	
BOS Agenda # 24-76 1/23/2024	$ 510,000
County Library	
BOS Agenda # 23-2058 1/23/2024	4,303
HHSA	
Children's Trust Fund	7,610
Subtotal	521,913
Total Cash Donations Reported for Quarter-Ended December 31, 2023	**$ 592,103**
Total Non-Cash Donations Reported for Quarter-Ended December 31, 2023	
None Reported	-
All Known Donations Reported for Quarter Ended December 31, 2023	**$ 592,103**

[1] Amounts exceeded $1,000 or Departments subject to quarterly reporting to BOS.

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Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-112

TO: Board of Supervisors

FROM: Tracy A. Schulze - Auditor-Controller

REPORT BY: Georgina Panganiban - Accounting Manager

SUBJECT: Annual Comprehensive Financial Report and Single Audit for Fiscal Year Ending June 30, 2023

RECOMMENDATION

Accept and file the Annual Comprehensive Financial Report (ACFR) and the Single Audit Report - Schedule of Expenditures of Federal Awards (SEFA), for fiscal year ended June 30, 2023. (No Fiscal Impact, Mandatory)

BACKGROUND

California Government Code Section 25250 addresses the requirements of the County to have an examination of the financial statements in accordance with generally accepted auditing standards. The Annual Comprehensive Financial Report (ACFR) presented to you today includes an unmodified (clean) opinion from the County's external auditors, Brown Armstrong Accountancy Corporation.

The ACFR is organized with five main sections: (1) the Introductory Section, including the Transmittal Letter signed by the Auditor-Controller, Tracy Schulze, and County Executive Officer, Ryan Alsop. (2) the Financial Section, including the Audit Opinion, and Management's Discussion and Analysis (MD&A), (3) the required Basic Financial Statements Section, including financial statements, note disclosures, and required supplementary information, (4) the Supplementary Information Section on non-major funds, enterprise funds and internal service funds, and (5) the Statistical Section. The ACFR is an excellent resource for the County's financial and statistical information. On January 12, 2024, the Auditor-Controller submitted the County's ACFR to the Government Finance Officers Association (GFOA) to participate in the Certificate of Achievement for Excellence in Financial Reporting Program. Each ACFR submitted to GFOA for consideration is reviewed and rated on various criteria within 17 different areas of the report. The County has received the GFOA Certificate of Achievement for Excellence in Financial Reporting in each of the past eighteen years. Due to the size of the report, the ACFR will be made available to the public through the County's website.

California Government Code Section 12410.5 and Code of Federal Regulations 2CFR 200.512 address the requirement of the County to compile and file a Single Audit Report - Schedule of Expenditures of Federal Awards (SEFA) with the State Controller and Federal Audit Clearinghouse. The SEFA is required for any

governmental or non-profit entity that spends over $750,000 of federal funding in a single fiscal year, and requires additional audit testing and procedures to review the compliance and accurate reporting of each expenditure. The SEFA has been prepared based on federal guidelines and must be completed and accepted by the Board of Supervisors no later than March 31, 2024.

During fiscal year 2022-23, the County had expenditures of approximately $50.1 million in federal cash awards (including pass-through grants to sub-recipients), continued tracking $9.5 million in federal loan awards, and distributed $1.3 million in noncash assistance (nutrition assistance vouchers), for a total of approximately $60.9 in federal funding. The audit report presented today has an unmodified (clean) opinion from the County's external auditors, Brown Armstrong Accountancy Corporation, and will be made available to the public through the County's website.

Requested Action: Accept and file the reports.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	No
Future fiscal impact:	None
Consequences if not approved:	The County would not be in compliance with the California Constitution

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-109

TO: Board of Supervisors

FROM: Neha Hoskins - Clerk of the Board

REPORT BY: Anthony Williams - Deputy Clerk of the Board II

SUBJECT: Approval of Minutes

RECOMMENDATION

Approval of minutes from the January 8, 2024 & January 9, 2024, special and regular meetings.

BACKGROUND

Approval of minutes from the January 8, 2024 & January 9, 2024, special and regular meetings.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Meeting Minutes

Napa County Board of Supervisors

Joelle Gallagher, District 1
Ryan Gregory, District 2
Anne Cottrell, District 3
Alfredo Pedroza, District 4
Belia Ramos, District 5

* This is a simultaneous meeting of the Board of Supervisors of Napa County, Napa County Public Improvement Corporation, Silverado Community Services District, Monticello Public Cemetery District, In-Home Supportive Services Public Authority of Napa County, Lake Berryessa Resort Improvement District, Napa Berryessa Resort Improvement District, Napa County Housing Authority, and the Napa County Groundwater Sustainability Agency.

www.countyofnapa.org

Monday, January 8, 2024 **9:00 AM** **Board of Supervisors Chambers**
1195 Third Street, Third Floor

SPECIAL MEETING

1. CALL TO ORDER; ROLL CALL

   Present: Chair Belia Ramos, Vice-Chair Joelle Gallagher, Supervisors Anne Cottrell, Ryan Gregory, and Alfredo Pedroza. The meeting was called to order by Chair Belia Ramos.

2. PLEDGE OF ALLEGIANCE

   Chair Belia Ramos led the assembly in the Pledge of Allegiance.

3. PET OF THE WEEK

   None

4. PRESENTATIONS, PROCLAMATIONS, AND COMMENDATIONS

   None

5. CONSENT CALENDAR - SPECIAL DISTRICTS

   None

6. CONSENT CALENDAR

   None

7. PUBLIC COMMENT

   None

8. BOARD OF SUPERVISORS REPORTS AND ANNOUNCEMENTS

None

9. DISCUSSION OF ITEMS PULLED FROM CONSENT CALENDARS

None

10. ADMINISTRATIVE ITEMS - SPECIAL DISTRICTS

None

11. ADMINISTRATIVE ITEMS

Clerk of the Board

A. Election of Officers for Calendar Year 2024: **24-46**

1. Board of Supervisors (Chair and Vice Chair)

2. Napa County Groundwater Sustainability Agency (Chair and Vice Chair)

3. Napa County Housing Authority (Chair, Vice Chair and Deputy Secretary)

4. In-Home Supportive Services Public Authority of Napa County (Chair, Vice Chair and Secretary)

5. Lake Berryessa Resort Improvement District (Chair and Vice Chair)

6. Monticello Public Cemetery District (Chair and Vice Chair)

7. Napa Berryessa Resort Improvement District (Chair and Vice Chair)

8. Napa County Public Improvement Corporation (President, Vice President, Treasurer and Secretary)

9. Silverado Community Services District (President and Vice President)

Motion Text:	**Elect Supervisor Joelle Gallagher as Chair and Supervisor Anne Cottrell as Vice Chair for Item A.**
Voting Yes:	**Ramos, Gregory, Cottrell, Gallagher, and Pedroza**
Recusals:	**None**
Result:	**Passed**

B. Annual appointment/reappointment of members of the Board of Supervisors to various committees, commissions, and advisory boards. **24-04**

Motion Text: **Appoint Supervisor Anne Cottrell to replace Supervisor Alfredo Pedroza as member of the Climate Action Committee and appoint Supervisor Belia Ramos as alternate member; appoint Supervisor Anne Cottrell as member of the Emergency Medical Care Committee and Supervisor Belia Ramos as alternate member; and appoint Supervisor Joelle Gallagher to replace Supervisor Belia Ramos as member of the California State Association of Counties - Health & Human Services.**

Voting Yes: **Gregory, Pedroza, Cottrell, Ramos, and Gallagher**

Recusals: **None**

Result: **Passed**

12. PUBLIC HEARING - SPECIAL DISTRICTS

None

13. PUBLIC HEARINGS

None

14. CLOSED SESSION

None

15. ADJOURNMENT

ADJOURN TO THE BOARD OF SUPERVISORS REGULAR MEETING, TUESDAY, JANUARY 9, 2024 AT 9:00 A.M.

Neha Hoskins (By e-signature)

NEHA HOSKINS, Clerk of the Board

Meeting Minutes

Napa County Board of Supervisors

Joelle Gallagher, District 1
Ryan Gregory, District 2
Anne Cottrell, District 3
Alfredo Pedroza, District 4
Belia Ramos, District 5

* This is a simultaneous meeting of the Board of Supervisors of Napa County, Napa County Public Improvement Corporation, Silverado Community Services District, Monticello Public Cemetery District, In-Home Supportive Services Public Authority of Napa County, Lake Berryessa Resort Improvement District, Napa Berryessa Resort Improvement District, Napa County Housing Authority, and the Napa County Groundwater Sustainability Agency.

www.countyofnapa.org

Tuesday, January 9, 2024 **9:00 AM** **Board of Supervisors Chambers 1195 Third Street, Third Floor**

1. CALL TO ORDER; ROLL CALL

   Present: Chair Joelle Gallagher, Vice-Chair Anne Cottrell, Supervisors Ryan Gregory, Alfredo Pedroza and Belia Ramos. The meeting was called to order by Chair Joelle Gallagher.

2. PLEDGE OF ALLEGIANCE

   Napa Communities Firewise Foundation Chair Christopher Thompson led the assembly in the Pledge of Allegiance.

3. PET OF THE WEEK

   Animal Shelter Manager Katie Ribardiere presented the Pet of the Week (Domino).

4. PRESENTATIONS, PROCLAMATIONS, AND COMMENDATIONS

   A. Present a proclamation recognizing Supervisor Belia Ramos for her service and accomplishments as Board Chair in 2023. **24-45**

   Chair Joelle Gallagher presented the proclamation.

   Supervisor Belia Ramos made presentation.

   B. Present a proclamation recognizing January 2024 as "6th Annual Positive Parenting Awareness Month" in Napa County. **24-44**

   Chair Joelle Gallagher presented the proclamation.

   Cope Family Center Executive Director Jessica Silverman made presentation.

5. CONSENT CALENDAR - SPECIAL DISTRICTS

Motion Text:	**Approve Special Districts Consent Calendar.**
Voting Yes:	**Ramos, Gregory, Cottrell, Pedroza, and Gallagher**
Recusals:	**None**
Result:	**Passed**

Napa Berryessa Resort Improvement District

A. Authorize the purchase of a capital asset, waive competitive bidding requirements, and issue sole source award to Midwest Containers from Stockton, CA for the purchase of one cargo storage container. (Fiscal Impact $10,000, Fund 5240 Napa Berryessa Resort Improvement District (NBRID), Not Budgeted; Discretionary) [4/5 vote required] **23-1950**

6. CONSENT CALENDAR

Motion Text:	**Approve Consent Calendar as amended.**
Voting Yes:	**Ramos, Cottrell, Gregory, Pedroza and Gallagher**
Recusals:	**Gregory and Pedroza (Item 6B Only)**
Result:	**Passed**

Clerk of the Board

A. Approval of minutes from the December 19, 2023 regular meeting. **24-01**

County Counsel

B. Adopt an Ordinance amending portions of Chapter 2.70.010 of the Napa County Code in order to ensure consistency among all participants of the Commission on Medical Care. (No Fiscal Impact) [UNANIMOUS VOTE REQUIRED] **24-82**

Enactment No: **O-1486**

County Executive Office

C. Adopt a Resolution and approve and authorize Property Tax Allocation Agreement No. 240258B with the American Canyon Fire Protection District related to their proposed annexation of a parcel at 1661 Green Island Road. (Fiscal Impact: $2,000 revenue reduction annually; General and Fire Funds; Not Budgeted; Discretionary) **24-51**

Enactment No: **R-2024-01**

County Fire Department

D. Approve and authorize Amendment No. 1 to Agreement 240001B with United Site Services of California, Inc. to include additional sanitation services at the Fire Training Grounds and related increase to compensation rates. (Fiscal Impact: $149,600 for five-year term; Fire, Property Management, and Roads Funds; Budgeted; Discretionary) **24-02**

Enactment No: A-240001B Amend.1

E. Approve and authorize Memorandum of Understanding Agreement No. 240250B with the City of Napa, City of American Canyon Fire Protection District, and the City of Calistoga to apply for regional grants from various governments. (No Fiscal Impact). **24-59**

Item removed from the agenda.

Enactment No: A-240250B

Human Resources – Division of CEO's Office

F. Adopt a Resolution to amend the Table and Index of Classes and Departmental Allocation List for the Sheriff's Office. (Fiscal Impact: $2,416 in FY2024 and $5,431 per year in future fiscal years; General Fund; Budgeted; Discretionary) **24-17**

Enactment No: R-2024-02

Information Technology Services – Division of CEO's Office

G. Approve and authorize Amendment No. 1 to Agreement No. 210171B with Arctic Wolf Networks, Inc., increasing the amount by $942,162 for a new maximum of $1,663,133 and extending the term to January 7, 2027. (Fiscal Impact: $942,162; Information Technology Services Fund; Budgeted; Discretionary) **24-29**

Enactment No: A-210171B Amend. 1

Public Works

H. Approve and authorize creation of Project 24024 for the "Measure T Oakville Cross Road, Yountville Cross Road, and Finnell Road Paving Project," RDS 24-10, and appropriation for expenditures from the Measure T Special Revenue Fund. (Fiscal impact: $300,000; Roads Fund; Not budgeted; Discretionary) **23-2060**
[4/5 vote required]

I. Accept and file a report on Space License Agreements and Lease Agreements executed by the County Executive Officer during the period July 1, 2023, through December 31, 2023, pursuant to Resolution No. 2018-36. (No Fiscal Impact) **24-09**

J. Authorize the purchase of a capital asset for a replacement dump truck, sole source award to Golden Gate Truck Center, and Budget Amendment totaling $312,000 to increase Fleet Roads Equipment Replacement appropriation from insurance claim revenue and available fund balance for a truck totaled in an accident. (Fiscal Impact: $312,000 expense less $297,000 revenue; Fleet Management Fund; Not Budgeted; Discretionary)
[4/5 vote required] **24-22**

K. Approve and authorize the disposal of ten county surplus vehicles and authorize the sale of these vehicles at auction. (Fiscal Impact; increased revenue; Fund 4100 (Fleet), Division 41020 (Replacement Vehicles); Not Budgeted, Discretionary)
[4/5 vote required] **24-41**

L. Approve and authorize Amendment No. 1 to Agreement No. 240200B with Kimley-Horn to create right of way plat maps showing necessary easements for the Napa Valley Vine Trail (NVVT), the segment from Yountville through St. Helena. (No Fiscal Impact, Discretionary). **24-48**

Enactment No: A-240200B Amend. 1

M. Approve and authorize a letter from the Board of Supervisors to Caltrans in support of the Napa Valley Vine Trail Coalition and Napa Valley Vintners cooperative effort to move the "Welcome to Napa Valley Sign," currently on Robert Mondavi Winery property, to private property next to the Caltrans staging area west of the northerly terminus of Washington Street and north of Yountville. (No Fiscal Impact) **24-58**

Item removed from agenda.

N. Approve and authorize Agreement No. 240257B with the Clif Family Foundation to accept $3 million contribution toward the paving of Ink Grade Rd. (Fiscal Impact, $3,000,000 Revenue; Roads Fund; Not Budgeted; Discretionary) **24-62**

Enactment No: A-240257B

7. PUBLIC COMMENT

None

8. BOARD OF SUPERVISORS REPORTS AND ANNOUNCEMENTS

Supervisor Anne Cottrell reported on meeting with Clerk of the Board Neha Hoskins for an overview of the Clerk's functions, one of which is a project with County Executive Officer Ryan J. Alsop, Assistant County Executive Officer Rebecca Craig, and Legislative and Policy Analyst Andrew Mize to have all County policies and procedures in one location for more efficiency and public transparency.

9. DISCUSSION OF ITEMS PULLED FROM CONSENT CALENDARS

None

10. ADMINISTRATIVE ITEMS - SPECIAL DISTRICTS

None

11. ADMINISTRATIVE ITEMS

Clerk of the Board

A. Appointment of one (1) of the following applicants to serve on the Napa Sanitation District Board of Directors as a Public Member with the term commencing immediately and expiring December 31, 2025 (No Fiscal Impact): **24-13**

Peter Bartlett
Kenneth C. Deibert
Alan Charles Dell'Ario
Eric T. Dahlberg

Clerk of the Board Neha Hoskins made presentation.

Supervisor and Napa Sanitation District Board Member Ryan Gregory made presentation.

Motion Text:	**Appoint Peter Bartlett to serve on the Napa Sanitation District Board of Directors as a Public Member.**
Voting Yes:	**Gregory, Pedroza, Cottrell, Ramos, and Gallagher**
Recusals:	**None**
Result:	**Passed**

County Counsel

B. Introduction and intention to adopt an Ordinance approving a minor boundary change between Napa and Sonoma counties proposed by Sheldon Richards. (No Fiscal Impact) **24-11**

Deputy County Counsel Ryan Fitzgerald made presentation.

Discussion held.

Motion Text:	**Approve the intent to adopt the ordinance.**
Voting Yes:	**Ramos, Pedroza, Cottrell, Gregory, and Gallagher**
Recusals:	**None**
Result:	**Passed**

County Executive Office

C. Adopt a Resolution and approve and authorize Agreement No. 240259B taking necessary steps to sell approximately 70.6-acres of County-owned land commonly known as the Calistoga Fairgrounds property to the City of Calistoga. (No Fiscal Impact) **24-3**

CONTINUED TO JANUARY 23, 2024

County Executive Officer Ryan Alsop made presentation.

Item continued to the Board of Supervisors meeting on January 23, 2024.

County Fire Department

D. Approve and authorize Agreement No. 240256B with Napa Communities Firewise Foundation (NCFF) for a maximum amount of $7,000,000 for the term of July 1, 2023, to June 30, 2024 with two automatic one-year extensions, to provide community outreach, defensible space consulting, wildfire mitigation, fuel reduction and preparation for wildfires; and a Budget Amendment to increase Fire Marshal-Community Grants appropriation totaling $1,000,000 using restricted fund balance. (Fiscal Impact: $7,000,000 Expense; Fire Fund; $6,000,000 Budgeted and $1,000,000 Restricted Fund Balance; Discretionary)
[4/5 vote required] **24-61**

Napa County Fire Administrator David Shew made presentation.

Napa Communities Firewise Foundation Chief Executive Officer Joe Nordlinger made presentation.

Discussion held.

Motion Text:	**Approve the requested actions.**
Voting Yes:	**Pedroza, Gregory, Cottrell, Ramos, and Gallagher**
Recusals:	**None**
Result:	**Passed**

Enactment No: **A-240256B**

Human Resources – Division of CEO's Office

E. Adopt a Resolution to waive the 180-day wait period as defined in Government Code Sections 7522.56 and 21224 to hire Janet Nottley as an extra help retired annuitant. (Fiscal Impact, $90.08/hour not to exceed 960 hours; Child Support Services Fund; Budgeted; Discretionary) **24-31**

Director of Human Resources Christine Briceño made presentation.

Motion Text:	**Adopt the Resolution.**
Voting Yes:	**Cottrell, Pedroza, Gregory, Ramos, and Gallagher**
Recusals:	**None**
Result:	**Passed**
Enactment No:	**R-2024-03**

12. PUBLIC HEARING - SPECIAL DISTRICTS

None

13. PUBLIC HEARINGS

None

14. CLOSED SESSION

A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Government Code Section 54957) **24-74**
Title: Director of Corrections
Closed Session held. No reportable action.

B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code section 54956.9(d)(1)) **24-78**
Napa County, et al. v. Lindsay Blair Hoopes, et al.
Napa Superior Court Case No. 22CV001262
Closed Session held. No reportable action.

C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code section 54956.9(d)(1)) **24-79**
Hundred Acre Wine Group, Inc. v. County of Napa
Napa County Superior Court Case No. 22CV001166
Closed Session held. No reportable action.

D. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Government Code section 54956.9(d)(1)) **24-80**
Double Vee Properties, LLC, et al. v. County of Napa, et al., U.S. District Court (N.D. Cal.)
Case No. 3:23-cv-04546-AGT
Closed Session held. No reportable action.

15. ADJOURNMENT

ADJOURN TO THE BOARD OF SUPERVISORS REGULAR MEETING, TUESDAY, JANUARY 23, 2024 AT 9:00 A.M.

Neha Hoskins (By e-signature)

NEHA HOSKINS, Clerk of the Board

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-153

TO: Board of Supervisors

FROM: Neha Hoskins - Clerk of the Board

REPORT BY: Paulette Cooper - Deputy Clerk of the Board II

SUBJECT: Reappointments to the Napa County Law Library Board of Trustees

RECOMMENDATION

Reappointment of James V. Jones, for a ninth term, as Trustee for the Bar Association and Anthony Halstead, for a third term, as Trustee for the Board of Supervisors to the Napa County Law Library Board of Trustees with the terms of office to commence immediately and expire December 31, 2024 (No Fiscal Impact).

BACKGROUND

There are currently two vacancies on the Napa County Law Library Board of Trustees due to expiring terms, one representing Trustee for the Chair of the Board of Supervisors and one representing Trustee for the Bar Association. The County Executive Office advertised the vacancies and received two reappointment requests from James V. Jones and Anthony Halstead.

Pursuant to Business and Professions Code Section 6300, in each county of the State there is a law library that is governed by a Board of Law Library Trustees. Any judge who is an ex-officio or elected member may, at their option, designate a member of the Bar Association to act for them as a trustee. The Chair of the Board of Supervisors is ex officio as a trustee. The Board of Supervisors, at the request of the chair, may appoint a member of the State Bar, any other member of the Board of Supervisors of the County, or a resident of the County to serve as trustee in place of the Chair. The appointment of the person selected in place of the Chair of the Board of Supervisors shall expire when a new Chair of the Board of Supervisors is selected, and that appointment shall not be subject to the provisions of Section 6302.

The Board of Supervisors also appoints a trustee who is a member of the local bar association. Section 6302 of the Code calls for appointments to the Law Library Board of Trustees made by the Board of Supervisors to be made at the first meeting of the year of the Board of Supervisors in the succeeding January and last for a term of one year. These appointments will be calendared for the first meeting each year. Pursuant to the Business and Professional Code, the local bench has elected to have four members serve as trustees.

The Napa County Law Library Board of Trustees consists of the following:

•Four Superior Court Judges as Ex-Officio Members

•One Chair of the Board of Supervisors

•One Member of the Bar Association

Requested Action:

Reappointment of James V. Jones and Anthony Halstead to the Napa County Law Library Board of Trustees with the terms of office to commence immediately and expire December 31, 2024.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

A Tradition of Stewardship
A Commitment to Service

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580
Fax: (707) 253-4176

Neha Hoskins
Clerk of the Board

December 18, 2023

James V. Jones
[redacted]
Napa CA 94558
Via email [redacted]

Re: Napa County Law Library Board of Trustees

Dear Mr. Jones:

The term of your position representing the Napa County Law Library Board of Trustees expires on December 31, 2023.

If you wish to request reappointment, please check the boxes below, sign where indicated, and return this letter to the County Executive Office. When the letter has been returned, your name will be forwarded to the Board of Supervisors for consideration for reappointment to another one-year term, as you have been a valued member of the Napa County Law Library Board of Trustees.

If any of the information on your last application for appointment has changed or is 5 years or older please contact the Napa County Executive's Office to obtain a new application, and submit the completed new application when returning this letter.

☒ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the Napa County Law Library Board of Trustees for the term commencing immediately and expiring December 31, 2024.

☒ I confirm by signing below that all the information on my application is current; or

☒ Some of the information on my prior application is no longer correct. A new application is attached.

James V. Jones
SIGNATURE

12/29/23
DATE

Application for Appointment to Board, Commission, Committee, Task Force or Position

Applicants appointed by the Board of Supervisors will be required to take an oath of office. All applications will be kept on file for one year from the date of application.

Public Records Act

Applications are public records that are subject to disclosure under the California Public Records Act. Information provided by the applicant is not regarded as confidential except for the addresses and phone numbers of references and the applicant's personal information including home and work addresses, phone numbers and email address.

Form 700 Conflict of Interest Code

California Fair Political Practices Website

Please note that appointees may be required by state law and county conflict of interest code to file financial disclosure statements.

Which Boards would you like to apply for?

Napa County Law Library Board of Trustees: Submitted

Category of Membership for Which You Are Applying

Trustee

Profile

James (First Name) | V. (Middle Initial) | Jones (Last Name)

[redacted] (Email Address)

[redacted] (Home Address) | (Suite or Apt)

Napa (City) | CA (State) | 94558 (Postal Code)

Which supervisorial district do you reside in? *

☑ District 4

To find your supervisorial district go to https://www.countyofnapa.org/2051/Find-my-supervisor-and-district and enter your address.

[redacted] (Primary Phone)

Employer	Job Title	Occupation
	Attorney	Attorney at Law- Low Income Housing Developer

Education/Experience

Attorney at law since December 1967; Vice Mayor of City of Napa 1975; Low-income housing developer since 2004.

Name and occupation of spouse within the last 12 months, if married. (For conflict of Interest purposes)

Sandra Jones

Resume

Upload a Resume

Letter of Recommendation or Supplemental Attachments

Professional or occupational license, date of issue, and expiration including status

CA State Bar 40883 CA 1/31/24 Dpt. Hsing & Comm. Dev. DL1109552 1/31/25

References: Provide names and phone numbers of 3 individuals who are familiar with your background.

Judge Victoria Wood-[redacted]; Jim Nord-[redacted]; Ryan Gregory[redacted]

Community Participation

Please explain your reasons for wishing to serve and, in your opinion, how you feel you could contribute.

. I desire to continue my membership on this Board.

Nature of activity and community location

Other County Board/Commission/Committee on Which You Serve/Have Served

Past Pres. Napa Co. Bar Assn., Napa City Council 1972-1976, Past Pres. Napa Kiwanis Club, Pres. First Pres. Ch. of Napa Corp

Public Actions that may impact Credit Rating (List all court or other public administration actions impacting your credit rating within the past ten (10) years)

None.

Electronic Signature Agreement

I meet the criteria required to serve in this position.

◉ Yes ○ No

I declare under penalty of perjury that the foregoing is true and correct.

◉ Yes ○ No

Please Agree with the Following Statement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

☑ I Agree

Electronic Signature (First M. Last)

James V. Jones

Date

12/29/2023

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

A Tradition of Stewardship
A Commitment to Service

December 18, 2023

Anthony Halstead
[redacted]
Napa CA 94559
Via email [redacted]

Re: Napa County Law Library Board of Trustees

Dear Anthony:

The term of your position representing the Napa County Law Library Board of Trustees expires on December 31, 2023.

If you wish to request reappointment, please check the boxes below, sign where indicated, and return this letter to the County Executive Office. When the letter has been returned, your name will be forwarded to the Board of Supervisors for consideration for reappointment to another one-year term, as you have been a valued member of the Napa County Law Library Board of Trustees.

If any of the information on your last application for appointment has changed or is 5 years or older please contact the Napa County Executive's Office to obtain a new application, and submit the completed new application when returning this letter.

☒ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the Napa County Law Library Board of Trustees for the term commencing immediately and expiring December 31, 2024.

☐ I confirm by signing below that all the information on my application is current; or

☐ Some of the information on my prior application is no longer correct. A new application is attached.

[redacted]
SIGNATURE

1/9/24
DATE

Application for Appointment to Board, Commission, Committee, Task Force or Position

Applicants appointed by the Board of Supervisors will be required to take an oath of office. All applications will be kept on file for one year from the date of application.

Public Records Act

Applications are public records that are subject to disclosure under the California Public Records Act. Information provided by the applicant is not regarded as confidential except for the addresses and phone numbers of references and the applicant's personal information including home and work addresses, phone numbers and email address.

Form 700 Conflict of Interest Code

California Fair Political Practices Website

Please note that appointees may be required by state law and county conflict of interest code to file financial disclosure statements.

Which Boards would you like to apply for?

Napa County Law Library Board of Trustees: Submitted

Category of Membership for Which You Are Applying

Chairman of the Board of Supervisors

Profile

Anthony (First Name) | (Middle Initial) | Halstead (Last Name)

[redacted] (Email Address)

[redacted] (Home Address) | (Suite or Apt)

Napa (City) | CA (State) | 94559 (Postal Code)

Which supervisorial district do you reside in? *

☑ District 1

To find your supervisorial district go to https://www.countyofnapa.org/2051/Find-my-supervisor-and-district and enter your address.

[redacted] (Primary Phone)

County of Napa	Director of Library Services & Community Outreach	Librarian
Employer	Job Title	Occupation

Education/Experience

Master's of Science - Information Studies, BA in English; 26 years experience working in and with public libraries, last 15 at the Napa County Library

Name and occupation of spouse within the last 12 months, if married. (For conflict of Interest purposes)

ANTHONY HALSTEAD

Resume

Upload a Resume

Letter of Recommendation or Supplemental Attachments

Professional or occupational license, date of issue, and expiration including status

References: Provide names and phone numbers of 3 individuals who are familiar with your background.

Becky Craig-[redacted] Jon Gjestvang-[redacted] Neha Hoskins-[redacted]

Community Participation

Please explain your reasons for wishing to serve and, in your opinion, how you feel you could contribute.

The Napa County Library serves the entirety of Napa County's residents. We are a general use library and attempt to assist the public with whatever questions they may have - including those around legal issues. Once our skills, abilities and resources are exhausted, we refer people to other, more specialized services. This includes the Napa County Law Library. Additionally, post South Napa earthquake in 2014, the Law Library had a small collection of materials moved to our location and their Law Librarian was also stationed in our Napa Library location. Because of the ongoing nature of our work and the temporary location post-earthquake, our library is in the perfect position to help support those using the Law Library by ensuring that it has the proper resources and staffing expertise to meet the needs of both professional lawyers and the general public in search of answers to legal questions. Additionally, our extensive experience with programming and outreach could allow the Law Library to expand public awareness and encourage wider use to help support those in our community.

Nature of activity and community location

Other County Board/Commission/Committee on Which You Serve/Have Served

As Library Director, I currently sit on two different groups: I am the County's representative for the North Bay North Coast Broadband Consortium (NBNCBC). This group works towards increasing awareness and access to broadband connectivity in our community. Additionally, I serve as an Executive Committee member for the Northnet Library System, a regional consortium consisting of 40 public libraries and 2 academic libraries.

Public Actions that may impact Credit Rating (List all court or other public administration actions impacting your credit rating within the past ten (10) years)

Electronic Signature Agreement

I meet the criteria required to serve in this position.

○ Yes ○ No

I declare under penalty of perjury that the foregoing is true and correct.

◉ Yes ○ No

Please Agree with the Following Statement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

☑ I Agree

Electronic Signature (First M. Last)

Anthony J Halstead

Date

01/03/2024

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-154

TO: Board of Supervisors

FROM: Neha Hoskins - Clerk of the Board

REPORT BY: Paulette Cooper - Deputy Clerk of the Board

SUBJECT: Reappointment and Appointments to the First 5 Napa County Children and Families Commission

RECOMMENDATION

Reappointment of Kelsey Petithomme, for a second term, to represent Member with the term of office to commence immediately and expire January 1, 2028; appointment of Torence J. Powell to represent Member with the term of office to commence immediately and expire January 1, 2027; and appointment of Vanessa M. Rubio with the term of office to commence immediately and expire January 1, 2025 on the First 5 Napa County Children and Families Commission. (No Fiscal Impact)

BACKGROUND

There are currently three vacancies due to expiring term and resignations on the First 5 Napa County Children and Families Commission. The County Executive Office advertised the vacancies and received three applications from Kelsey Petithomme, Torence J. Powell, and Vanessa M. Rubio.

On March 2, 1999, the Board of Supervisors adopted Ordinance No. 1154 establishing a nine-member commission known as the Napa County Children and Families First Commission to meet the requirements of the California Children and Families First Act of 1998. Pursuant to the Act, the Commission developed and adopted a County Strategic Plan and will continue to promote and implement the plan for local early childhood development programs consistent with the goals and objectives of the California Children and Families First Act as set forth in the Health and Safety Code.

The nine-member Commission consists of the following categories:

a. Two members selected from among the County Health Officer and persons responsible for management of County functions pertaining to children's services, public health services, behavioral health services, social services, and tobacco and other substance abuse treatment services (commonly referred to as "County Representatives");

b. One member of the Board of Supervisors; and

c. Six members selected from among the services described in "a" above and persons from the following categories:

- recipients of project services included in the County Strategic Plan,
- educators specializing in early childhood development,
- representatives of a local child care resource or referral agency or a local child care coordinating group,
- representatives of a local organization for prevention or early intervention for families at risk,
- representatives of community-based organizations that have the goal of promoting nurturing and early childhood development,
- representatives of local school districts, and
- representatives of local medical, pediatric or obstetric associations or societies.

Requested Action:

Reappointment of Kelsey Petithomme to represent Member with the term of office to commence immediately and expire January 1, 2028 and appointment of Torence J. Powell to represent Member with the term of office to commence immediately and expire January 1, 2027 and Vanessa M. Rubio with the term of office to commence immediately and expire January 1, 2025 on the First 5 Napa County Children and Families Commission.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

A Tradition of Stewardship

A Commitment to Service

County Executive Office

1195 Third Street, Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4580

Neha Hoskins
Clerk of the Board

December 1, 2023

[redacted]

Via email: [redacted]

Re: **First 5 Napa County Children and Families Commission**

Dear Kelsey:

You have been a valued Member of the First 5 Napa County Children and Families Commission. The term of your position expires on January 1, 2024. If you wish to request reappointment for another 4-year term, please check the following box:

☑ Yes, I would like my name, this letter and application forwarded to the Board of Supervisors for possible reappointment to the First 5 Napa County Children and Families Commission for the term commencing immediately and expiring January 1, 2028.

If you have chosen to request reappointment, please check one of the two boxes below regarding your last application:

☑ I confirm that all the information on my last application is current.

☐ Some of the information on my last application is no longer current or is five (5) years old or older. I will submit a new or revised application.

To complete a new application form either contact the Napa County Executive Office or go to the following link to complete your application online:

Committees & Commissions | Napa County, CA (countyofnapa.org)

After checking the appropriate box, **sign and date on the lines below and return this letter to the County Executive Office by mail, email, or fax.**

Kelsey Simmons
SIGNATURE

12/20/23
DATE

Application for Appointment to Board, Commission, Committee, Task Force or Position

Applicants appointed by the Board of Supervisors will be required to take an oath of office. All applications will be kept on file for one year from the date of application.

Public Records Act

Applications are public records that are subject to disclosure under the California Public Records Act. Information provided by the applicant is not regarded as confidential except for the addresses and phone numbers of references and the applicant's personal information including home and work addresses, phone numbers and email address.

Form 700 Conflict of Interest Code

California Fair Political Practices Website

Please note that appointees may be required by state law and county conflict of interest code to file financial disclosure statements.

Which Boards would you like to apply for?

Napa County First 5 Children and Families Commission: Submitted

Category of Membership for Which You Are Applying

Member

Profile

Kelsey
First Name

Middle Initial

Petithomme
Last Name

[redacted]
Email Address

[redacted]
Home Address

Suite or Apt

NAPA
City

CA
State

94558
Postal Code

Which supervisorial district do you reside in? *

☑ District 2

To find your supervisorial district go to https://www.countyofnapa.org/2051/Find-my-supervisor-and-district and enter your address.

[redacted]
Primary Phone

Napa County Office of Education	Director, Early Childhood Services	Director of Child Development Programs and Special Education Services
Employer	Job Title	Occupation

Education/Experience

Ph.D, Educational Psychology California Credentialed School Psychologist 20 years experience in special education with a focus on early childhood education and elementary settings Director of NCOE's Early Childhood Services department which provides services for 750+ children in Napa County birth-5 including infant development programs, child development CSPP programs, and early childhood special education services

Name and occupation of spouse within the last 12 months, if married. (For conflict of Interest purposes) Tom Petithomme

Resume

Upload a Resume

Letter of Recommendation or Supplemental Attachments

Professional or occupational license, date of issue, and expiration including status

California Credentialed School Psychologist, Issued 6/21/2007, expires 7/1/2027 California Credentialed School Administrator, Issued 7/1/2017, expires 7/1/2027

References: Provide names and phone numbers of 3 individuals who are familiar with your background.

Julie McClure, Associate Superintendent, NCOE, [redacted] Barbara Nemko, County Superintendent of Schools, NCOE, [redacted] Jeanne Fridolfs, Napa County Local Childcare Planning Council Coordinator, [redacted]

Community Participation

Please explain your reasons for wishing to serve and, in your opinion, how you feel you could contribute.

As a Napa County Leader within early childhood services and education I believe I could be a wonderful addition to the First 5 Commission. As the director of large scale programs that serve our county's most vulnerable youth I am always advocating for ways in which we are supporting our 0-5 community, including their parents. I regularly interface with California Department of Education and all local school districts to ensure we have well articulated pathways and supports for our young learners. I believe I would bring the perspective of someone who has been in the field of early childhood education for a long time as well as someone who has been an advocate for children with disabilities and children who have been impacted by trauma.

Nature of activity and community location

NA

Other County Board/Commission/Committee on Which You Serve/Have Served

NA

Public Actions that may impact Credit Rating (List all court or other public administration actions impacting your credit rating within the past ten (10) years)

NA

Electronic Signature Agreement

I meet the criteria required to serve in this position.

◉ Yes ○ No

I declare under penalty of perjury that the foregoing is true and correct.

◉ Yes ○ No

Please Agree with the Following Statement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

☑ I Agree

Electronic Signature (First M. Last)

Kelsey A. Petithomme

Date

6/23/2022

Kelsey Petithomme

EDUCATIONAL LEADERSHIP & SCHOOL PSYCHOLOGY

[redacted]
[redacted]
[redacted]

CREDENTIALS

California Clear Administrative Services Credential

California Clear Pupil Personnel Services Credential:
School Psychology

EDUCATION

Doctor of Philosophy, PhD
Educational Psychology
University of Minnesota
2007

Master of Arts, M.A
Child Development
Master of Science, M.S.
School Psychology
University of Minnesota
2005

Bachelor of Arts, B.A
Psychology & Special Education
University of Illinois
2003

EDUCATIONAL LEADERSHIP EXPERIENCE

Director, Early Childhood Services
Napa County Office of Education
Napa, California
2019- Current

Provide leadership and administrative oversight to NCOE's Early Childhood Services program which includes Special Education Services, Child Development (CSPP/CCTR) Programs, Early Start (Infant/Toddler) Development Services, and Quality Programs/Grants Initiatives

- Oversee programming for 750+ children ranging birth-5 years of age
- Manage 120+ employees inclusive of management, certificated, classified and permitted staff
- Develop, allocate, and manage multi-million-dollar budget, inclusive of state contracts, fee for service billing model, state and federal grants, etc.
- Provide guidance and leadership regarding the vision of NCOE's Early Childhood Programs which focus on inclusive practices, Integrated Therapy, and a developmentally appropriate, high-quality early education experience
- Advocate at the state level for programs and policies regarding early childhood education, including participation on several statewide work groups
- Seek out and secure a wide variety of grant opportunities to support NCOE and county wide programs to improve quality programs
- Engage in long term, strategic planning to increase access to high quality preschool programs for children in Napa County
- Partner with several community agencies, including all local school districts, to ensure consistency and effectiveness across varying organizations and stakeholders within the birth-5 service community

Coordinator, Early Childhood Special Education
Napa County Office of Education, Napa Preschool Program
Napa, California
2017- 2019

Provided leadership and administrative oversight to NCOE's Early Childhood Special Education full inclusion program which serves 350+ students with special needs throughout Napa County

- Ensured compliance with state and federal guidelines in the implementation of special education services
- Provided leadership and supervision to special education and general education teaching staff, classroom assistants, and related service providers
- Developed and allocated special education budget and funding resources
- Planned, developed and organized classroom experiences and related services based on the needs of the student populations served
- Worked collaboratively with multiple county agencies, and school districts, to ensure children's needs are met and transitions between programs are successful
- Worked collaboratively with families to empower, educate, and provide support so they can effectively advocate on their child's behalf

Kelsey Petithomme

EDUCATIONAL LEADERSHIP & SCHOOL PSYCHOLOGY

[redacted]
[redacted]
[redacted]

CORE COMPETENCIES

Educational Leadership
Universal Design for Learning
Multi-Tiered Support Systems
Inclusive Educational Practices
Special Education
Preschool & Elementary Education
Child Development
Family & Community Partnerships
Data Based Decision Making
Positive Behavioral Supports & Trauma Informed Practices
Systems Thinking
Alternative Dispute Resolutions
Building Successful Teams
Facilitated IEP Meetings
Grant Writing & Implementation

EDUCATIONAL LEADERSHIP EXPERIENCE *CONTINUED*

Special Education Program Specialist & School Psychologist
San Carlos School District
San Carlos, California
2008- 2017

As a program specialist, provided administrative oversight and supervised day-to-day operations of multiple SCSD special education programs for preschool and elementary aged students

- Designed and implemented special education programs that allowed SCSD to broaden their continuum of services to include full inclusion preschool programs and elementary learning center models
- Assisted Director of Special Education in a variety of special education cases that required intensive case management and ongoing legal counsel
- Facilitated high profile IEP meetings within SCSD as well as through a support network to neighboring districts
- Designed and provided ongoing staff development for general education staff, special education staff, and parents
- As a school psychologist, conducted psychoeducational assessments to assist teams in determining eligibility for special education services
- Served as "lead school psychologist" at the district level
- Assisted IEP teams in the development of plans to support a variety of student needs
- Served as liaison between multiple agencies, such as Regional Centers and private providers, to ensure continuity of care

Autism Specialist
Marin County Special Education Local Plan Area (SELPA)
San Rafael, California
2007- 2008

Provided leadership, education, and technical assistance for 13-member school districts for increasing capacity to successfully educate students with autism countywide.

- Conducted county and district wide needs assessments and provided recommendations for the development of successful programs for students with autism ranging from self contained site-based programs to inclusion programs
- Developed and implemented countywide teacher and paraprofessional training modules to ensure consistency of educational practices across the SELPA
- Worked closely with county and district council on due process cases related to the education of children with autism
- Served as Educational Expert on several county wide workgroups focused on autism and related services

Application for Appointment to Board, Commission, Committee, Task Force or Position

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Public Records Act

Applications are public records that are subject to disclosure under the California Public Records Act. Information provided by the applicant is not regarded as confidential except for the addresses and phone numbers of references and the applicant's personal information including home and work addresses, phone numbers and email address.

Form 700 Conflict of Interest Code
California Fair Political Practices Website

Please note that appointees may be required by state law and county conflict of interest code to file financial disclosure statements.

Which Boards would you like to apply for?

Napa County First 5 Children and Families Commission: Submitted

Category of Membership for Which You Are Applying

At Large

Profile

Torence (First Name) | J. (Middle Initial) | Powell (Last Name)

[redacted] (Email Address)

[redacted] (Home Address) | (Suite or Apt)

Napa (City) | CA (State) | 94559 (Postal Code)

Which supervisorial district do you reside in? *

☑ District 1

To find your supervisorial district go to https://www.countyofnapa.org/2051/Find-my-supervisor-and-district and enter your address.

[redacted] (Primary Phone)

Napa Valley College	Superintendent/President	Community College Administrator
Employer	Job Title	Occupation

Education/Experience

I have worked in the field of higher education for 21 years, and in that time have directly overseen a Child Development Center, as well as an Early Childhood Education program. I have a Doctorate in Education, a Masters degree in Education, a Masters degree in Urban Design and Planning and a Bachelors degree in Social Science.

Name and occupation of spouse within the last 12 months, if married. (For conflict of Interest purposes)

Jennie Powell, High School Counselor

Resume

CV-March_2023.docx
Upload a Resume

Letter of Recommendation or Supplemental Attachments

Professional or occupational license, date of issue, and expiration including status

References: Provide names and phone numbers of 3 individuals who are familiar with your background.

Jeni Olsen - [redacted] Terry Wooten [redacted] Jeff Dodd - [redacted]

Community Participation

Please explain your reasons for wishing to serve and, in your opinion, how you feel you could contribute.

I see the potential for collaborative partnership between First 5 Napa and Napa Valley College (NVC). At NVC we host the Child Development Center on campus, and currently offer 10 certificate/degree programs in the field of Child and Family Studies. Our students are both recipients of First 5 resources and potential contributors, as they access resources while attending NVC and eventually will work for many of the organizations that provide these essential services. As Superintendent/President, I see my contribution as helping to develop stronger strategic initiatives that leverage our combined resources for maximum benefit of our county.

Nature of activity and community location

Other County Board/Commission/Committee on Which You Serve/Have Served

None.

Public Actions that may impact Credit Rating (List all court or other public administration actions impacting your credit rating within the past ten (10) years)

None.

Electronic Signature Agreement

I meet the criteria required to serve in this position.

◉ Yes ○ No

I declare under penalty of perjury that the foregoing is true and correct.

◉ Yes ○ No

Please Agree with the Following Statement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

☑ I Agree

Electronic Signature (First M. Last)

Torence J. Powell

Date

12/5/23

Torence J. Powell, Ed.D.

[redacted], Sacramento, CA 95835 • [redacted] • [redacted]

Education:

University of California, Davis
School of Education
Ed.D., Educational Leadership, June 2017
Dissertation – "Developmental Math Programs in California Community College: An Analysis of Math Boot Camp at Cosumnes River College"

University of Washington
College of the Built Environments
MUP, Master of Urban Planning, August 2009
Thesis – "Implementation of Inclusionary Zoning in Southeast Seattle"

University of Redlands
School of Education
M.Ed, Educational Administration, December 2006
Thesis – "An Evaluative Assessment of the PUEDE Peer Mentoring Project"

California State University, Los Angeles
College of Natural and Social Sciences
B.A., Social Science with a minor in History, June 2003

Educational Leadership

Superintendent/President, Napa Valley College, Napa, CA

Provide executive support and leadership for programs and initiatives that support the success of students at Napa Valley College. Foster an unwavering commitment and dedication to supporting and growing a culture of equity, diversity, and inclusion throughout the College community through the lens of equity and race consciousness Provide leadership in developing plans and policies for the improvement of instruction, student services and the evaluation of existing programs. Administer the College's Budget. Assure the operations of college-wide governance mechanisms involving all constituencies. Recommend personnel actions to the Board of Trustees. Advocate and engage in activities and partnerships that build upon and strengthen the College's image, reputation and community relations by developing and maintaining relationships with local educational, civic and business interests.

Serve as the secretary to the Board of Trustees and represent the Board and the College before all constituencies and funding sources. Represent the college to broader community within Napa County and beyond. Monitor and assess legislative policy, with emphasis on assessing implications for the college. Directly supervise the college Executive Team consisting of Assistant Superintendents, Vice Presidents and Senior Directors.

Associate Vice Chancellor of Instruction, Workforce and Economic Development, Los Rios Community College District, Sacramento, CA

September 2020 – June 2022

Provided leadership and oversight in Instructional Services activities across the Los Rios CCD. Work collaboratively with faculty, classified and management constituency groups to assess and implement policies in areas including: curriculum and program development; instructional technology; workforce/economic development; and educational policy. Serve as Executive Secretary for the District Curriculum Coordinating Committee and the Program Placement Council. Worked collaboratively with the District Academic Senate and Los Rios College Federation of Teachers (LRCFT) on planning and execution of strategic goals. Worked collaboratively with the Associate Vice Chancellors of IT, Student Services, Strategy & Communication and Resource Development on multiple districtwide initiatives.

Led the four college strategic enrollment management activities, including: integration of Enterprise level software systems (e.g. Highpoint Degree Planer, Starfish, Ad Astra); expansion of Dual Enrollment; and the Los Rios Colleges Online Distance Education initiative.

Provided leadership and oversight to the Los Rios Workforce and Economic Development division. Administer districtwide career education portfolios including Carl D. Perkins, Strong Workforce and Department of Labor grants. Chair the Los Rios Career Education Council. Provided leadership and oversight to the Los Rios Government Training Academy (GTA) contract education programs. Collaborate with external regional stakeholders on strategic workforce and economic development initiatives.

Co-chaired or led several participatory governance groups, district workgroups and task forces, including: the District Accessibility Plan Implementation Committee (DAPIC); the Los Rios Colleges Online Coordinating Council; Online Course Development Coordinators; Textbook Affordability Task Force; and Study Abroad/International Education. Serve as a Negotiation Lead for the LRCCD/LRCFT multiple Districtwide initiatives (e.g. Distance Education, Accessibility).

Interim Vice President, Student Access and Online Engagement, Los Rios Community College District, Sacramento, CA
July 2019 – August 2020

Led the Los Rios Colleges Online effort - a four-college, districtwide initiative to create program pathways for students to complete degrees and certificates 100% online. Worked collaboratively with the Chancellor's Executive Team, consisting of the Chancellor and Deputy Chancellor, the four College Presidents, Vice and Associate Vice Chancellors to build the implementation strategy and timeline for program execution. Served as a member of the Deputy Chancellor's Leadership Team and represented district-wide initiatives in the online education space to internal stakeholders, the Los Rios Board of Trustees and external stakeholders. Represented the Los Rios CCD online education initiatives at conferences, inter-district activities and community events.

Co-Chaired the District's LRCO Coordinating Council, a Districtwide participatory governance group that operationalizes strategic goals for online growth. Led efforts to build and maintain program maps for 100% online programs. Worked with college Vice Presidents of Instruction and Instructional Deans to schedule courses within a formal sequence. Led a district-wide team of Student Services professionals to develop

wraparound supports services accessible exclusively online. Built formal student cohorts with formal student/faculty learning communities. Led district-wide efforts to incorporate technology-based solutions into operations for online student support services, including but not limited to: Starfish and Degree Planner software, CCC Apply interface and the PeopleSoft Student Information System.

Supervised and supported a team of Los Rios Colleges Online managers and classified staff. Served as a Negotiation Lead for the LRCCD/Los Rios College Federation of Teachers (LRCFT) tri-annual contract negotiation process.

Associate Vice President, Instruction and Student Learning, Cosumnes River College, Sacramento, CA
August 2015 – Present

Serve as the administrator-in-charge of the college curriculum and scheduling processes, oversee the college's Career Education (CE) projects, grants and programs. Serve as the Executive Secretary of the college's Curriculum Committee, ensuring curriculum remains in compliance with college, District, State and Federal guidelines/policies. Manage the college's curriculum inventory, including local PeopleSoft databases and the State Chancellor's Office Curriculum Inventory. Oversee submission of all courses and programs of study. Produce the college's annual Catalog and Addendum documents. Produce the college's semester schedule. Manage the distribution of Temporary Contracts for instructional faculty, as well as the processing of Employee Service Agreements, absence reporting, faculty release time and Professional Expert contracts.

Managed the College's CE projects, including all CE grants (e.g. Carl D. Perkins, Strong Workforce funds, Federal agency grants, community collaborative grants). Served as the college's lead for Economic and Workforce Development (EWD) projects. Ensured compliance with District, State and Federal policies concerning use of CTE funds. Administered all CE grant budgets and manage resource allocation across the college. Served as the college's voting member for the North/Far North Regional Consortium, as well as the college representative for the Los Rios CTE Leadership (CTEL) group.

Directly supervised the Deans of the Business and Family Science (BFS) and Careers and Technology (C&T) divisions, as well as the college's Grant Project Director for CTE Programs. Directly supervise the college's three Instructional Service Assistants. Provide day-to-day coordination of administrative activities within these Divisions/Areas.

Served as the college's Equity Officer. Conducted equity investigations into allegations of discrimination based upon protected classes. Drafted comprehensive reports of findings, and consulted with the Los Rios District HR and General Counsel Offices, as necessary. Conducted Diversity and Equity trainings for Los Rios staff on State and Federal laws governing hiring practices and discrimination. Chaired the college's Accreditation Standard 1B sub-committee during the last accreditation cycle, as well as the college's Workforce Development sub-committee during the last strategic planning process.

Dean, Communication, Visual and Performing Arts, Cosumnes River College, Sacramento, CA
July 2012 – August 2015

Provided leadership and management of the instructional division, consisting of the departments of: Art; Music; Theatre; Communication Studies; Radio, Television, Video and Film; Photography; and Journalism and Film Studies. Supervise the division, inclusive of 23 full-time and 35-plus part-time faculty; 8 classified employees; and 6 student assistants. Managed performance evaluations of all staff in a timely and efficient manner.

Scheduled courses, in compliance with district regulations and programmatic needs, and in collaboration with department chairs. Coordinated and administered day, extended day, weekends, online and summer instructional offerings. Contributed to division curriculum and program review, including program assessment and facilitation of improvements. Oversaw division budgets and manage resource allocation, including procurement of new instructional equipment and technology. Led initiatives for capital equipment/resource allocation by ensuring effective program planning and justification documents. Provided programmatic support for visual/performing arts faculty through logistical support of over 40 theatric, oratorical/rhetorical and musical performances annually. Managed facilities operations of the college Black Box theatre and Recital Hall, including scheduling, facilities maintenance and general operations.

Managed two Career Technical Education (CTE) programs. Oversaw division Federal Perkins allocations and, with oversight of the college Associate Vice President of Instruction (AVPI), ensure compliance with regulations on allocation and spending. Served as the College's voting member for the North/Far North Regional Consortium. Assisted the college AVPI with Perkins grant writing and reporting documents, as needed. Contributed to college-wide goals and initiatives through service on college shared governance committees, including College Planning; Professional Development; Distance Education/IT; Curriculum; and Sustainability committees. Ensured compliance of departments with college-wide policies, goals and objectives. Represented the college at community and professional functions/events, as needed.

Director, GreenForce Projects, Cosumnes River College, Sacramento, CA
February 2010 – June 2012

Managed grant-funded projects including: green technical training programs sourced from Department of Labor and Department of Energy ARRA funds; pre-college career pathway programs from State Chancellor's Office CTE community collaborative funds; and recruitment and community outreach projects from federal Congressional earmark funding.

Managed a high of $3.1 million of state and federally sourced grant funds for green/sustainable-themed education programs including; grant-funded course scheduling, equipment and instructional materials acquisition, and reporting. Oversaw California State and Federally-sourced Sustainability and Career and Technical Education (CTE) themed grants, including coordination of Senate Bill 70 Community Collaborative grant projects for the State Chancellor's Office, Cosumnes River College and Sacramento City College. Assured compliance with State and Federal regulations for grant usage. Assisted with course scheduling across three divisions, collaborating with division deans to creatively utilize grant funding to support courses linked to GreenForce programs.

Collaborated with Sacramento Region Industry professionals in Clean/Green Technology, Engineering and Construction/Design sectors. Was the college liaison to industry partner advisory committees in fields of architecture, construction, and horticulture, to ensure

compliance with state higher education regulations and to improve career technical education course offerings. Performed outreach and recruitment to students into new and developing fields of study. Served as the primary College contact on Sustainability-themed projects. Supervised a staff of 12 professionals and para-professionals. Produced annual, quarterly and monthly reports for federal, state and local grantors. Secured new funding sources for GreenForce projects through grant writing. Conducted assessment research and evaluation of GreenForce projects.

Assistant Director, Center for Diversity and Inclusion, University of Redlands, Redlands, CA
September 2003 – July 2007

Coordinated the operations of the Center for Diversity and Inclusion, consisting of the Multicultural, Women's and P.R.I.D.E. Centers. Planned comprehensive diversity-themed social and educational programs. Facilitated diversity oriented seminars and workshops for students, faculty, staff and community members. Organized and facilitated retreats, public speaker and performance events, leadership trainings and student-led initiatives.

Represented the University of Redlands in the surrounding communities. Worked as a Special Liaison for the Admissions Office on developing community networks with surrounding communities of color, including development of community outreach programs for the purpose of recruitment of a more diverse student body. Created and oversaw the Diversity Leadership Project for student leaders, a yearlong leadership initiative designed to create student peer facilitators. Created and directed the I'm Going to College community outreach program for K-12 grade local students.

Performed qualitative and quantitative evaluative research of Diversity Affairs programs and objectives, including program assessment and annual report writing for administrators of the Irvine Grant. Supervised 12 student intern/programmers, advised multiple student organizations including the African American Association, 1 in 4 Sexual Assault Awareness organization for men and Rangi Ya Giza non-Greek fraternal organization.

Urban Planning

Development Planner/Consultant, Creatives4Community, Seattle, WA
June 2008 – December 2009
Assisted in schematic design of New Holly Hope VI Housing Project, as a contracted employee of the Seattle Housing Authority and the Seattle Planning and Development Department. Ensured compliance with Seattle City and County land use ordinances, zoning regulations and federal public housing requirements. Developed community outreach programs to facilitate residential engagement in redesign. Coordinated and assessed design charettes, community forums, brown bag discussions and town hall meetings. Co-created and facilitated the Yesler2014 Youth Engagement Summer Program for two consecutive years. Developed curriculum to teach high school-aged youth urban design and planning principles. Taught youth the basic urban planning principles, including: zoning, housing finance, neighborhood design, built environment software packages (e.g. SketchUp, ArcGIS, CAD), and transportation management.

Graduate Student Research Assistant, Department of Urban Design and Planning, University of Washington, Seattle, WA

March 2008 – June 2008
Conducted preparatory research for the King County Food and Fitness Initiative, on behalf of the Kellogg Foundation. Met weekly with leading Professors and other research assistants to develop data collection strategies and food security indicators. Assessed food security and food accessibility for residents in Delridge and White Center neighborhoods in King County and Seattle, WA. Prepared reports highlighting results from food security data collection to be used by community organizations and future graduate students.

Teaching and Research Experience

Graduate Student Research Assistant, Department of Urban Design and Planning, University of Washington, Seattle, WA
March 2008 – June 2008
Conducted preparatory research for the King County Food and Fitness Initiative (KCFFI), on behalf of the Kellogg Foundation. Met weekly with leading Professors and other research assistants to develop data collection strategies and food security indicators. Assessed food security and food accessibility for residents in Delridge and White Center neighborhoods in King County and Seattle, WA. Prepared reports highlighting results from food security data collection to be used by community organizations and future graduate students. Presented finding to KCFFI Board of Governors on food security and accessibility of predominately low-income Seattle and King County residents.

Adjunct Professor, Service Learning, University of Redlands, Redlands, CA
2004 – 2007
Taught Environmental Justice and Service Learning courses, with an emphasis on American Indian reservations, resource management, riparian wetlands restoration and environmental remediation efforts. Employed an on-site laboratory, whereby students traveled to the Quechan Indian Reservation in Yuma, AZ for a 5-day service project/environmental justice opportunity. Incorporated components of traditional indigenous resource management, concepts of ecosystem homeostasis, equilibrium vs. non-equilibrium, and human habitation in extreme environments. Worked on the Colorado River Project, a wetlands restoration project that restores the Colorado River to pre-colonial conditions.

Adjunct Professor, Service Learning, University of Redlands, Redlands, CA
2006
Taught Social Justice and Service Learning Course abbreviated semester travel course, with an emphasis on Post-Hurricane Katrina New Orleans. Lead student volunteers during off-campus service learning projects. Took students to New Orleans for 10 days of community service and examination of local politics, community conditions and the restoration effort.

Professional Organization Membership:

Graduate, Carolyn Grubbs Williams Leadership Development Institute, 2014
Member, National Council on Black American Affairs, 2014 - Present
Member, North/Far North Regional Consortium, 2010 – Present
Member, Sacramento Metro EDGE, 2014 - 2018
Member, Association of California Community College Administrators (ACCCA), 2012 - Present

Member, California Community College Associate of Occupational Educators (CCCAOE), 2010 – Present
Member, American Planning Association, 2007 – Present
Member, 100 Black Men of Seattle, 2009 – 2014
Member, California Council of Cultural Centers in Higher Education (CaCCCHE), 2003 – 2019

Academic/Fraternal Organization Membership:

Kappa Alpha Psi Fraternity, Inc member
Phi Alpha Theta Historical Honors Society member
Golden Key International Honors Society member
Pi Lambda Theta Educational Honors Society member

Community Organization Membership/Board Positions:

African American Gold Rush Association, Board Member
Sacramento Metro Chamber of Commerce Political Action Committee, Past Member
Metro EDGE Political Action Committee, Past Chair
Elk Grove Chamber of Commerce Workforce Development Committee, Past Member
Bigger Than Us Arts, Board President
Green Technical Education and Employment Academy, Board Member and Secretary
Laguna Creek High School GETA Academy, Advisory Committee Member
LEED Career GPS Coordinating Committee, Past Member
Valley Hi Safety Fair Coordinating Committee, Past Member

Student Club Advisor Experience:

Advisor, Poetry Club, Cosumnes River College (2013-2015)
Advisor, MiXed, University of Washington (2007-2009)
Advisor, African American Association, University of Redlands (2003 – 2007)
Co-Advisor, One in Four, University of Redlands (2005 – 2007)
Co-Advisor, Rangi Ya Giza, University of Redlands (2005 – 2007)

Application for Appointment to Board, Commission, Committee, Task Force or Position

Applicants appointed by the Board of Supervisors will be required to take an oath of office. All applications will be kept on file for one year from the date of application.

Public Records Act

Applications are public records that are subject to disclosure under the California Public Records Act. Information provided by the applicant is not regarded as confidential except for the addresses and phone numbers of references and the applicant's personal information including home and work addresses, phone numbers and email address.

Form 700 Conflict of Interest Code
California Fair Political Practices Website

Please note that appointees may be required by state law and county conflict of interest code to file financial disclosure statements.

Which Boards would you like to apply for?

Napa County First 5 Children and Families Commission: Submitted

Category of Membership for Which You Are Applying

Membership C

Profile

Vanessa (First Name) | M (Middle Initial) | Rubio (Last Name)

[redacted] (Email Address)

[redacted] (Home Address) | (Suite or Apt)

Napa (City) | CA (State) | 94559 (Postal Code)

Which supervisorial district do you reside in? *

☑ District 1

To find your supervisorial district go to https://www.countyofnapa.org/2051/Find-my-supervisor-and-district and enter your address.

[redacted] (Primary Phone)

Napa COE	Community Schools Program Planner	Education
Employer	Job Title	Occupation

Education/Experience

I have been working in the social services field for a decade now. My initial years were spent working with children who had been exposed to domestic violence. Later, I shifted my focus to adolescents aged between 12 to 18 years old and worked in the domain of behavioral health and substance abuse prevention education. Currently, I am focusing on providing administrative and technical support to Napa Valley school districts. I am responsible for assisting with their systems, community school planning, and implementation.

Name and occupation of spouse within the last 12 months, if married. (For conflict of Interest purposes)

Nicholas Mabanta- Hospitality, Clos Du Val Winery

Resume

Vanessa_Rubio_2023_Resume_New.pdf
Upload a Resume

VRM_LOR.pdf
Letter of Recommendation or Supplemental Attachments

Professional or occupational license, date of issue, and expiration including status

n/a

References: Provide names and phone numbers of 3 individuals who are familiar with your background.

Guadalupe Aguayo-[redacted] Sara Sitch-[redacted] Johana Navarro-[redacted]

Community Participation

Please explain your reasons for wishing to serve and, in your opinion, how you feel you could contribute.

Ever since I turned 18, I have been an active member of my community. I have spent most of my time at community resource fairs, aiding our Latinx community in accessing important information and resources. While I have worked in direct service with people over the past five years, my new professional role is more technical and administrative, which provides me with a lot more flexibility in terms of time. I now have the desire to join a commission for the first time. By joining the commission, I can be part of the decision-making system that promotes advocacy, inclusivity and supports for families. I feel grateful to be a part of the Third Cohort of the First Five Napa Network. This experience has given me the opportunity to learn about the diverse and evolving needs of our community through a system-level approach. My personal values center around supporting the growth, development, and well-being of the community in Napa. I grew up in Napa County with a single parent who received systems support when I was between the ages of 2 and 5 years old. Now, I am excited to apply for a commission where my voice can make a difference in the lives of young children and families who choose to raise a family in Napa.

Nature of activity and community location

Participation: Community Resource Fairs in Napa County First 5 Napa Network Cohort 3 NCOE-Footsteps to Brilliance Outreach NEWS- Keds Program Volunteer

Other County Board/Commission/Committee on Which You Serve/Have Served

N/A

Public Actions that may impact Credit Rating (List all court or other public administration actions impacting your credit rating within the past ten (10) years)

N/A

Electronic Signature Agreement

I meet the criteria required to serve in this position.

◉ Yes ○ No

I declare under penalty of perjury that the foregoing is true and correct.

◉ Yes ○ No

Please Agree with the Following Statement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

☑ I Agree

Electronic Signature (First M. Last)

Vanessa M. Rubio

Date

1/3/24

Vanessa M. Rubio

Napa County Office of Education Program Planner, Community Schools.

[redacted]
Napa, CA 94559
[redacted]

EXPERIENCE

Napa County Office of Education — *Program Coordinator II*

2017 - Present

Responsible for Implementing and overseeing the Mariposa and Bridging Brothers program that falls under a culturally responsive prevention program within NCOE, including school and community based programs.

Napa County Office of Education — *Program Assistant*

2015 - 2017

Responsible for implementing weekly students support groups and assisting to provide Tobacco Use Prevention education county wide. Attends Napa CARES Network to collaborate with partner agencies.

Kids Exposed to Domestic Violence (KEDS) — *Internship*

2014 - 2015

Support program to help children and families heal from exposure to domestic violence and prevent future violence. Responsible for assisting case plans that include multiple children service providers, school and family resources. Supported with outreach and education events.

EDUCATION

Napa Valley College

Present

Completing AA with an emphasis in social and behavioral sciences.

North Bay Schools Insurance Authority

2022- 2023

Developing Supervisory Excellence: A strengths- Based approach Certification

65 Hour Domestic Violence & Sexual Assault Counselor Course Work

2014 - 2015

Qualified Domestic Violence Counselor and Sexual Assault Counselor by the State of California CAL-EMA

SKILLS

Advocacy

Cultural Humility

Organization

Decision- Making

Proficiency in Microsoft Word, Excel, Outlook, Powerpoint, Google Docs

AWARDS & Recognition

Equity Award-NCOE Core Values

Prevention Champions Award

2022-23 NBSIA Developing Supervisory Excellence

Mitigating Racial Bias

LANGUAGES

English and Spanish.

PROJECTS & COMMITTEES

Diversity Equity and Inclusion eLearning Modules — *2021*

As an ambassador of DEI Committee, responsible for supporting elearning modules to provide all staff with shared basic knowledge of diversity, equity and inclusion.

Napa CARES Network — *Present*

Leads County wide collaborative which focuses on bridging together a group of dedicated school partners in an effort to provide peer to peer youth campaigns, resources and advocacy in prevention campaigns.

First 5 Napa County Network Cohort 3 — *2023*

A cross-sector network focused on tackling the most intractable challenges on the path to creating a better future for ALL Napa County's children, 0-5, and families.

Social Emotional Learning Champion — *Present*

Committee Aims to Integrate a system of social emotional learning practices to cultivate a safe space within our department.

Guadalupe Aguayo
[redacted], West Sacramento, CA 95605 | [redacted] | [redacted]

January 4th, 2024

First 5 Napa County
1301 Jefferson Street, #100A
Napa, CA 94559

To Whom It May Concern:

It is with immense confidence and pleasure that I recommend Vanessa Rubio-Mabanta for a commission position with First 5 Napa Network.

I have worked with Vanessa since 2020 within her previous role as the Mariposa/Bridging Brothers Program Manager. Vanessa's passion for early prevention and intervention is clearly apparent in her fierce educational advocacy and in the initiative she demonstrated in launching several supplementary student resources and programs. Vanessa demonstrates incredible drive, and in my time working with her she has successfully implemented Florecer, a program that creates pathways for youth interested in the Early Childhood field; Ballet-Folklorico, an underrepresented cultural extracurricular; and expanded Mariposa into several elementary schools. She is locked into the needs of the students in our community and coordinates opportunities to close the gap in educational disparities.

Beyond her performance as a Program Manager, Vanessa's most special and distinguishing quality is her natural ability to create genuine, deep connections with each student. The way students look to her for advice, honest truth, and a safe place to vent is a testament to her unrivaled ability to connect with students. She has years of experience empowering students to lay the foundation for them to thrive in new and innovative ways.

I am confident in Vanessa's reliability, advocacy, and vision for the future. I recommend Vanessa without hesitation and am confident that she will be an asset to the commission.

Warmly,

Guadalupe Aguayo

Guadalupe Aguayo
Project Manager
Aldea, Inc.

FIRST 5
NAPA COUNTY

January 4, 2024

Ms. Neha Hoskins

County of Napa

1195 Third Street, Floor 3

Napa, CA 94559

Ms. Hoskins,

On December 4, 2023, the Napa County First 5 Commission voted to recommend the following to the Board of Supervisors:

1) Appoint applicant Dr. Torence Powell
2) Appoint applicant Vanessa Rubio-Mabanta

Please contact me with any questions you may have.

Thank you,

Lilea Duran

Executive Director

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-73

TO: Board of Supervisors

FROM: Sheryl L. Bratton, County Counsel

REPORT BY: Ryan FitzGerald, Deputy County Counsel

SUBJECT: Adoption of Minor Boundary Change Ordinance

RECOMMENDATION

Adopt an Ordinance approving a minor boundary change between Napa and Sonoma counties proposed by Sheldon Richards. (No Fiscal Impact, Mandatory)

BACKGROUND

On September 11, 2023, Sheldon Richards, both in his individual capacity and as Trustee of the J. Sheldon Richards Trust U/A Dated November 10, 2016 ("Petitioner") filed a petition with the Clerk of the Napa County Board of Supervisors ("Clerk") requesting a change of the boundary between Napa and Sonoma Counties. The current county line runs through the Petitioner's property located at 4013 Spring Mt. Road, Saint Helena and Petitioner sought to align the county line with his property line. The petition sought to transfer approximately 1.41 acres of what is currently located in Sonoma County to Napa County and approximately 0.02 acres of what is currently Napa County to Sonoma County.

Because the petition sought a change which would not (a) move the county line more than 5 miles from its original location, (b) reduce either county's area by more than 5 percent, or (c) reduce either county's population by more than 5 percent, it is considered a "Minor Boundary Change" under Government Code § 23200 et seq.

The Clerk determined that the petition satisfied the signature requirements set forth in Government Code § 23205(e). The Napa County Board of Supervisors set the time, date, and place to consider the boundary change for public hearing through Resolution 2023-128 as required by Government Code § 23206. The Clerk caused notices to be published in newspapers of general circulation in both Napa and Sonoma counties and gave notice of the hearing as required by Government Code § 23207.

A public hearing was held on November 28, 2023 to consider the proposed boundary change. Testimony supporting the boundary change was presented, and there were no oral or written protests received. At the conclusion of the hearing, the Board directed staff to return with a proposed Ordinance for the boundary

change.

Because no protests were received before the conclusion of the hearing, Government Code § 23210(a) requires the Napa County Board of Supervisors and the Sonoma County Board of Supervisors to adopt substantially similar ordinances approving the proposed boundary change. Napa and Sonoma County staff collaborated on the ordinance language.

On January 9, 2024, the Board of Supervisors introduced an Ordinance changing the boundary between Napa and Sonoma counties as proposed by Sheldon Richards. The Board unanimously passed a motion of intent to adopt the proposed Ordinance. This consent calendar item requests that the Board take final action adopting the Ordinance.

Staff and County Counsel recommend adoption of the Ordinance.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Mandatory
Consequences if not approved:	Failure to adopt the ordinance would be at odds with Government Code § 23210 and may open the County to liability.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California

Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

ORDINANCE NO. _____

AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, EFFECTING A BOUNDARY ADJUSTMENT BETWEEN NAPA AND SONOMA COUNTIES

The Board of Supervisors of the County of Napa ordains as follows:

SECTION I. Findings and Purpose.

A. On September 11, 2023, a petition for a boundary adjustment between Napa and Sonoma counties was filed with the Clerk of the Napa County Board of Supervisors by Sheldon Richards both in his capacity as Trustee of the J. Sheldon Richards Trust U/A Dated November 10, 2016 and in his individual capacity, as owner of property in the area affected by the proposal.

B. On October 10, 2023, the Napa County Board of Supervisors adopted its Resolution 2023-128, setting November 28, 2023, as the date for a hearing on the petition. Notice of the hearing was given in the manner required by Government Code Section 23207.

C. At the close of the public hearing, no written protests of the proposed boundary adjustment were filed by the Boards of Supervisors of Napa or Sonoma Counties or owners of the affected territory. The proposed boundary adjustment meets each of the conditions of the conditions of Government Code Section 23202. Therefore, the Counties of Napa and Sonoma are required to adopt this ordinance under Government Code Section 23210.

D. The adoption of this ordinance and the resulting boundary adjustment between Napa and Sonoma Counties will not have a significant effect on the environment.

SECTION II. The Boundaries of Napa and Sonoma Counties are altered by the removal of the territory described in Exhibit "A" (attached to and incorporated into this ordinance by this reference) as Areas A, C, and E from unincorporated Sonoma County and the addition of the same territory to unincorporated Napa County and by the removal of the territory described in

Exhibit "A" as Areas B and D from unincorporated Napa County and the addition of the same territory to unincorporated Sonoma County.

SECTION III. Pursuant to Government Code 23212, the Clerk of the Napa County Board of Supervisors shall, on behalf of the Napa County Board of Supervisors, file with the State Board of Equalization and the assessors of Napa and Sonoma Counties a statement setting forth the legal description of the boundary as changed along with a map depicting the new boundary.

SECTION IV. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Napa County Board of Supervisors hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION V. This ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION VI. A summary of this ordinance shall be published at least once five (5) days before adoption and at least once before the expiration of fifteen (15) days after its passage in the Napa Valley Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 9th day of January 2024, and passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 23rd day of January 2024, by the following vote:

AYES: SUPERVISORS _____

_____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

_____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors
By: *Ryan FitzGerald* (e-sign) Deputy County Counsel By: */s/ Brandon Aguilera* Code Services Date: December 27, 2023	Date: _____ Processed By: _____ Deputy Clerk of the Board	By: _____

I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON _____.

_____, DEPUTY
NEHA HOSKINS, CLERK OF THE BOARD

5164
Ex A
09-08-2023

EXHIBIT A
NAPA COUNTY / SONOMA COUNTY
MINOR BOUNDARY CHANGE
GEOGRAPHICAL DESCRIPTION

A portion of the Northeast quarter of the Northwest quarter and the Northwest quarter of the Northeast quarter in Section 29, Township 8 North, Range 6 West, Mount Diablo Base and Meridian, described as follows:

AREA A

Beginning at the Iron Stake #17 (Station 856+34) L.S. 7950 as shown on the Record of Survey entitled J.T. Kingsbury 1877 Retracement Survey Phase III, recorded March 6, 2014, in Book 43 of Record of Surveys at Pages 32-29, Napa County Records, State of California, said point being on said the Napa / Sonoma County line, also being **Point of Beginning A**

(1) thence along said Napa / Sonoma County line North 59° 30' 00" East 210.00 feet;
(2) thence South 66° 00' 00" East 409.00 feet;
(3) thence South 78° 00' 00" East 221.65 feet
(4) thence leaving said County Line thence South 0° 52' 30" West 171.63 feet;
(5) thence North 46° 28' 11" West 321.25 feet;
(6) thence North 85° 55' 26" West 106.59 feet;
(7) thence North 72° 29' 02" West 182.05 feet;
(8) thence South 84° 34' 01" West 224.50 feet;
(9) thence South 85° 16' 37" West 174.17 feet;
(10) thence North 68° 05' 04" West 37.61 feet to said Napa / Sonoma County line to **Point of Beginning B**;
(11) thence along said Napa / Sonoma County line North 85° 00' 00" East 176.70 feet to the **Point of Beginning A**.

AREA B

Beginning at said Point of Beginning B on said Napa / Sonoma County line

(12) thence along said Napa / Sonoma County line South 85° 00' 00" West 39.30 feet;
(13) thence North 31° 30' 00" West 29.85 feet to said Napa / Sonoma County line to **Point of Beginning C**;
(14) thence along said Napa / Sonoma County line South 68° 05' 04" East 59.01 feet to the **Point of Beginning B**.

AREA C

Beginning at said Point of Beginning C on said Napa / Sonoma County line

(15) thence North 68° 05' 04" West 15.09 feet;
(16) thence North 27° 31' 49" West 113.45 feet;
(17) thence North 30° 26' 09" West 61.43 feet to said Napa / Sonoma County line to **Point of Beginning D**;

5164
Ex A
09-08-2023

(18) thence along said Napa / Sonoma County line South 31° 30' 00" East 186.72 feet to the **Point of Beginning C**.

AREA D

Beginning at said Point of Beginning D on said Napa / Sonoma County line

(19) thence along said Napa / Sonoma County line North 30° 26' 09" West 247.26 feet;
(20) thence North 19° 00' 00" East 5.95 feet to **Point of Beginning E**;
(21) thence leaving said Napa / Sonoma County line South 31° 30' 00" East 243.43 feet to the **Point of Beginning D**.

AREA E

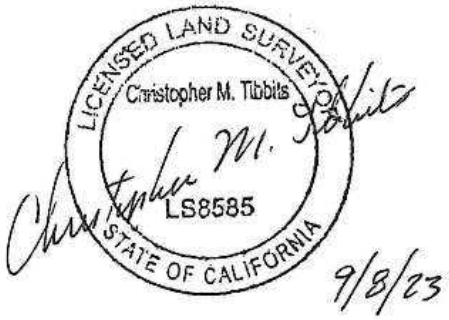
Beginning at Point of Beginning E on said Napa / Sonoma County line

(22) thence North 30° 26' 09" West 10.16 feet;
(23) thence North 15° 29' 36" East 270.76 feet;
(24) thence North 31° 04' 31" West 198.09 feet
(25) to the beginning of a non-tangent curve in the south line of Spring Mountain Road; said curve being concave to the south having a radius of 800.67 feet and to which a radial line bears North 9° 53' 08" West thence northeasterly 26.90 feet along said curve through a central angle of 1° 55' 29" to said Napa / Sonoma County line;
(26) thence along said Napa / Sonoma County line South 25° 00' 00" East 220.00 feet;
(27) thence South 19° 00' 00" West 259.05 feet to the **Point of Beginning E**.

Containing 1.43 Acres, more or less.

Basis of Bearing being the "Phase III J.T. Kingsbury 1877 Retracement Survey" per, Book 43 of Surveys at Pages 32-39, Napa County Records.

For assessment purposes only. This legal description of land is Not a legal property description as defined in the Subdivision Map Act and may not be used as a basis for an offer for sale of the land described.



1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-54

TO: Board of Supervisors

FROM: Jason Martin, Deputy County Fire Chief

REPORT BY: Stacie McCambridge, Staff Services Manager

SUBJECT: Amendment No. 2 to Priority Dispatch Agreement

RECOMMENDATION

Approve and authorize Amendment No. 2 to Agreement No. 190110B with Priority Dispatch, Inc. increasing the annual maintenance amount to $10,630 and extending the term July 1, 2023, through June 30, 2024 for Emergency Medical Dispatching services. (Fiscal Impact: $10,630 expense; Fire Fund 2100 Division 2100000; Budgeted; Discretionary)

BACKGROUND

CalFire St. Helena Emergency Command Center provides Emergency Medical Dispatching (EMD) services to Napa County using Priority Dispatch, one of the most advanced widely used, scientifically backed, emergency call processing system. The computer software Pro QA takes these EMD protocols and integrates them into the Computer Aided Dispatching (CAD) system. This integration streamlines the EMD service provided to the citizens and allows critical medical information to be shared with responding resources allowing responders to better prepare for the medical emergencies to which they are responding.

The annual license/maintenance agreement allows access to technical support 365 days a year and maintains the medical protocols and software to the latest version allowing the Emergency Command Center to keep up with the changes in emergency medicine. Over the last several years, there have been multiple changes in protocol and tools surrounding the medical world and the EMD protocol and software has been updated to match those changes providing the highest level of pre-arrival instruction and care to the Napa County citizens and first responders. EMD also allows dispatchers to give pre-arrival instructions to the 911 caller such as CPR instructions, bleeding control and even childbirth.

Today's approval will increase the annual maintenance amount by $3,430 for a new maximum of $10,630 and

extend the term to June 30, 2024. Administrative delays by the vendor delayed presentation to the Board.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	2100 Fire Fund
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The annual license maintenance agreement allows access to technical support 365 days a year and maintains the medical protocols and software to the latest version allowing the Emergency Command Center to keep up with the changes in emergency medicine.
Is the general fund affected?	No
Future fiscal impact:	Fire Fund will continue to annually budget for the program subscription.
Consequences if not approved:	If this agreement is not approved, we would lose the technical support that maintains changes in protocol and the EMD protocol as well as software updating to match those changes providing the highest level of pre-arrival instruction and care to the Napa County citizens and first responders.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by California Code of Regulations title 14, section 15378 (State CEQA Guidelines) and, therefore, CEQA is not applicable.

AMENDMENT NO. 2
NAPA COUNTY AGREEMENT NO. 190110B

PROFESSIONAL SERVICES AGREEMENT

THIS AMENDMENT NO. 2 ("Amendment No. 2") **TO AGREEMENT NO. 190110C** ("Agreement"), now referred to as 190110B, is made and entered into as of this 1st day of September 2023 by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Medical Priority Consultants, Inc., doing business as Priority Dispatch Corp. ("PDC"), a Utah corporation, whose mailing address is 110 South Regent Street, Suite 500, Salt Lake City, Utah 94111, hereinafter referred to as "CONTRACTOR." Collectively, COUNTY and CONTRACTOR are referred to in this Amendment No. 2 as "Parties."

RECITALS

WHEREAS, COUNTY on or about April 13, 2018, COUNTY and CONTRACTOR entered into Agreement No. 190110C ('Agreement"); and

WHEREAS, COUNTY on or about July 1, 2020, COUNTY and CONTRACTOR entered into Agreement No. 190110C, Amendment No. 1 ("Agreement") to extend term and increase the annual maintenance fee from $6,000 to $7,200; and

WHEREAS, the COUNTY has continued needs for services for strategic dispatching call taking software for the Emergency Command Center and CONTRACTOR is willing to and able to provide such additional services; and

WHEREAS, the Parties mutually desire to modify the terms of said Agreement to extend the term to June 30, 2024, and increase the annual maintenance fee from $7,200 to $10,629.88.

TERMS

NOW, THEREFORE, COUNTY acting through its Board of Supervisors, and CONTRACTOR hereby amends the Agreement as follows:

1. Exhibit "A-2," attached hereto is hereby incorporated into the Agreement.

2. Exhibit "B-2," attached hereto is hereby incorporated into the Agreement.

3. Paragraph 1 of the Agreement is mended to read in full as follows:

> **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2024, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination), or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8

(Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed two additional years, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purpose of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

4. Paragraph 2 of the Agreement is amended to read in full as follows:

Scope of Services. CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A" attached to the Agreement as originally approved, those additional services set forth in Exhibit "A-1," attached to Amendment No. 1 of the Agreement, and those additional services set forth in Exhibit "A-2," attached to this Amendment No. 2, said Exhibits being incorporated herein by this reference.

5. Paragraph 3 of the Agreement is amended to read in full as follows:

Compensation.

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work in this Amendment No. 2, COUNTY shall pay CONTRACTOR at the rate of set forth in Exhibit "B-2," attached hereto and incorporated by reference herein.

(b) Expenses. No travel or other expenses will be reimbursed by COUNTY.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of TEN THOUSAND SIX HUNDRED TWENTY NINE DOLLARS AND EIGHTY EIGHT CENTS ($10,629.88) for professional services per fiscal year; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

The actual payments made under this Agreement for the work in Exhibit "A" shall not exceed the per task maximum amounts set forth in Exhibits "B" and the actual payments for the work in Exhibit "A-1" shall not exceed the per task maximum amounts set forth in Exhibit "B-1." The actual payments for the work in Exhibit "A-2" shall not exceed the per task maximum amounts set forth in Exhibit "B-2."

6. This Amendment No. 2 shall be effective as of the Effective Date first set forth, above.

7. Except as provided in Paragraphs 1 through 6 above, the terms and conditions of the Agreement shall remain in full force and effect as originally approved.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

PRIORITY DISPATCH CORP.
"doing business as PDC"

By _____
SIMON CANTARERO, General Counsel & Corp Secretary

By _____
IMAN HADDAD, Contract Administrator

"CONTRACTOR"

NAPA COUNTY, a political subdivision of the State of California

By: _____
JOELLE GALLAGHER, Chair of the Board of Supervisors

"

APPROVED AS TO FORM Office of County Counsel By: *Shana A. Bagley* County Counsel Date: August 9, 2023	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____

EXHIBIT "A-2"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

The use of PDC's products and services are set forth in the End User License Agreement(s).

Support for PDC's products is available 24/7/365 via phone, email, and internet.

Computer Automated Dispatch ("CAD") Integration. The Parties understand any costs relating to the integration of the PDC software ("ProQA") and will be the sole responsibility of the COUNTY. COUNTY has a contract with CALFIRE for the Computer Automated Dispatch system now in place. The integration of Client's CAD system and ProQA must be inspected, tested, and certified by PDC before taking live calls.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT "B-2"

COMPENSATION AND EXPENSE REIMBURSEMENT

The annual license, service, and support fee for licensed PDC products - $10,629.88.

If the quantity of PDC system licenses is increased during the life of this agreement, the annual fee will be amended to reflect the additional licenses at the then current expense.

Pricing is exclusive of any applicable tax. Any applicable tax will be added to the amount.

Annual invoice is net 30-days, unless otherwise specified.

If invoice is not paid within 60-days it will be considered "overdue" and accrue interest at 1% per month, compounding.

If invoice is not paid within 90-days, it will be in "default" and services and products provided by PDC may be removed, suspended, or become unavailable. If there is a dispute over an invoice, the "overdue" or "default" status may be delayed if there is communication towards resolution. Lack of communication for 30-days will advance the invoice to the next status (i.e. overdue to default).

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-135

TO: Board of Supervisors

FROM: Jason Martin, Deputy County Fire Chief

REPORT BY: Stacie McCambridge, Staff Services Manager

SUBJECT: Memorandum of Understanding for Regional Grant Applications from Governmental Agencies

RECOMMENDATION

Approve and authorize Memorandum of Understanding Agreement No. 240250B with the City of Napa, City of American Canyon Fire Protection District, City of St. Helena, and the City of Calistoga to apply for regional grants from various governments. (No Fiscal Impact).

BACKGROUND

Napa County Fire is requesting to collaborate with the City of Napa, American Canyon Fire Protection District, City of St. Helena and the City of Calistoga on regional grant applications through a Memorandum of Understanding (MOU). The collaboration would allow the five parties to apply for regional grants from various government agencies setting forth the terms of the regional agencies' cooperation for purposes of securing and administering multi-agency grants.

The MOU requires that when applying for a regional grant, a Host Agency will be identified by all parties and that the Host Agency will be responsible for all aspects of the grant. This includes, but is not limited to, cost share, accountability for the assets, and all reporting requirements in the regional application. The Host Agency must specify the individual and mutual responsibilities of the Host Agency as well as participating parties. Assets acquired under the regional grant award and reporting requirement deliverables will be accountable by the Host Agency. The five parties agree to provide the required monetary match for the total cost of their requested items as detailed in the grant application or guidelines.

By applying jointly, the respective fire departments or districts, are committed to regional cooperation and coordination to achieve cost effectiveness, support regional efficiency and resilience that will benefit more than

one local jurisdiction. Regional grants may include vehicle acquisition, training, equipment, wellness, and fitness programs, and personal protective equipment (PPE).

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it currently budgeted?	Yes
Where is it budgeted?	2100 Fire Fund.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The respective fire department or districts are committed to regional cooperation and coordination to benefit more than one local jurisdiction directly with grant funds if awarded.
Is the general fund affected?	No
Future fiscal impact:	The Fire Fund would absorb any future costs to items purchased with grant money.
Consequences if not approved:	County Fire would continue to seek grant funds individually.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by California Code of Regulations title 14, section 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

City of Napa Agreement No. _____

American Canyon Fire Protection District Agreement No. _____

Napa County Agreement No. 240250B

City of Calistoga Agreement No. _____

City of St. Helena Agreement No. _____

MEMORANDUM OF UNDERSTANDING FOR REGIONAL GRANT APPLICATIONS FROM MULTIPLE GOVERNMENT AGENCIES

This Memorandum of Understanding for Regional Grant Applications from Multiple Government Agencies (this "MOU") by and between the City of Napa, a California charter city ("CITY"), American Canyon Fire Protection District, a California special district ("AMERICAN CANYON"), Napa County, a political subdivision of the State of California ("COUNTY"), City of Calistoga, a California city ("Calistoga") and City of St. Helena, a California city ("St. Helena") is effective as of the effective date identified on the signature page. CITY, AMERICAN CANYON, COUNTY, CALISTOGA and ST. HELENA may be identified as "a Party," or collectively, as "the Parties". The Parties are public entities organized and operating under the laws of the State of California and each is a public agency as defined in California Government Code section 6500.

RECITALS

A. The CITY, COUNTY, AMERICAN CANYON, CALISTOGA, and ST. HELENA desire to collaborate on regional Grant applications to apply for regional Grants from various governmental agencies. These Grant applications typically require a memorandum of understanding setting forth the terms of the regional agencies' cooperation for purposes of securing and administering regional Grants. This MOU is solely for the purpose of establishing an administrative structure to apply for and administer multi-agency Grants. If any Grants are awarded, the Parties understand that each Grant will have further specific requirements that will be imposed at that time, subject to review and approval by each Party prior to submission of any Grant application.

B. The Parties, through the Fire Chiefs of the respective fire departments or districts, are committed to regional cooperation and coordination to achieve cost effectiveness, support regional efficiency and resilience, and benefit more than one local jurisdiction directly from the activities implemented with Grant funds if they are Awarded.

C. Regional Grant activities may include but are not limited to, vehicle acquisition, training, equipment, wellness and fitness, and personal protective equipment ("PPE") activities.

D. None of the Parties is prevented from applying on behalf of its own organization for any activity; however, it cannot be for the same item as a regional Grant and will be subject to the individual Grant requirements.

NOW, THEREFORE, the CITY, COUNTY, AMERICAN CANYON, CALISTOGA, and ST. HELENA for the considerations hereinafter set forth, mutually agree as follows:

1. DEFINITIONS.

(a) Application: The specific set of forms, documents, and attachments that comprise an applicant's submission to a regional Grant opportunity.
(b) Host Agency: Agency to act as host and apply for funding on behalf of itself and any number of other Participating Parties.
(c) Participating Parties: Parties to this MOU seeking a Grant Award directly from an Awarding agency to carry out an activity under a Grant program.
(d) Regional Grant: A Grant that is offered by a local, state, or federal agency that, if Awarded, would provide some type of benefit (either monetary or otherwise) to more than one of the Participating Parties.
(e) Grant Agreement: A Grant between an Awarding agency to Participating Parties that sets the terms and conditions of a Grant, including for what it can be used.
(f) Award: Financial assistance that provides support or stimulation to accomplish a public purpose.
(g) Cost Sharing or Matching: The portion of project costs not paid by Grant funds.

2. TERM OF THE AGREEMENT AND RIGHT TO TERMINATE. This Agreement takes effect upon the signature of the Parties and shall remain in effect until mutually modified or terminated. The term of this Agreement shall expire on December 31. 2028, except that the obligations of the Parties under paragraph 5 (Mutual Indemnification) shall continue in full force and effect after said expiration date as to the liability for acts and omissions occurring during the term of this Agreement. Any Party may terminate this MOU for convenience (with or without cause) by providing written notice of termination to the other Parties, effective upon the date stated in the notice.

Notwithstanding the foregoing, if the Grant Agreement is terminated for any reason, this MOU as to that Grant shall automatically terminate at the same time.

3. REGIONAL APPLICATION MANAGEMENT.

(a) To apply for a regional Grant, a Host Agency must be identified by the Parties and must agree, if Awarded, to be responsible for all aspects of that Grant. This includes, but is not limited to cost share, accountability for the assets, and all reporting requirements in the regional application. The Host Agency of the regional application is not considered a pass-through entity and may not issue sub-Awards.

(b) Regional Grant Applications may only be submitted on behalf of Parties that have consented in writing to join as a Participating Party, in accordance with each agency's rules and regulations for applying for Grants.

- The Host Agency shall prepare a memo specifying the individual and mutual responsibilities of the Host Agency and Participating Parties, the host's, and participants' level of involvement in the project(s), the Participating Parties' Employer Identification Number, and the proposed distribution of all Grant-funded assets or contracted services. This memo shall be reviewed and signed by each Participating Party's Fire Chief prior to Grant submission.

(c) Purpose. This MOU establishes the relationship between the Participating Parties for participation in regional Grant programs and Regional Grant Awards in the event of approval of each Application.

Collaboration Between the Parties. The Parties agree to the following:

- Determining which Party will serve as the Host Agency to submit a Regional Grant program Application and serve as Grant administrator for the Participating Parties in the event of award.
- Pursuant to the specific Grant program guidelines, all items approved under the Application will be procured and administered through the Host Agency in event of Award.
- The Host Agency will provide accountability for the assets acquired under the Regional Grant Award and provide reporting requirement deliverables. As such, Participating Parties agree to provide the Host Agency with this information on a timely basis to remain in compliance with the requirements of the Grant and the Grant Agreement.
- The Participating Parties agree to accept the regional Grant program Award and accept their respective items as listed in the Grant application in the event of approval, in accordance with each Party's existing policies and practices.
- Any expenditure beyond the Grant Award for a Party's approved item(s) remains the sole responsibility of that Party.
- The Participating Parties agree to allow the Host Agency to procure and distribute their respective assets if Awarded under the regional Grant program.
- The Participating Parties agree to participate in cooperative training on all equipment procured under the Regional Grant Award as appropriate. Training will be coordinated through the Host Agency.
- The Participating Parties agree to maintain/repair all items awarded to them under the Application in accordance with the manufacturer's warranty, and to replace the equipment if it becomes inoperable for a period required after official closeout of the Grant Agreement.
- The Participating Parties agree to promptly provide any additional documentation to the Host Agency as requested, that may be necessary in connection with the Grant.
- Participating Parties agree to promptly return any equipment or deliverables that are received in error to the Host Agency.
- Each Participating Party understands that all records created as a result of participating in the Regional Grant program may be subject to the public disclosure pursuant to the Public Records Act and shall be responsible for compliance with any public records request served upon it.
- Each Participating Party shall maintain its own respective records and documents associated with this MOU sufficient to demonstrate compliance with the terms of this MOU for a period of five years from the termination of this MOU.

4. INVOICING AND PAYMENT. The Participating Parties agree to provide the required monetary match for the total cost of their requested items as detailed in the Regional Grant Application as required under the Regional Grant program guidelines. The required match shall be paid by the Participating Parties upon receipt of an invoice from the Host Agency, in

advance of associated procurement. The cash match will be determined among the Parties and based on percentage of benefit.

In the event of a reduced award, the Participating Parties agree to accept this reduced amount and provide a cash match on the total reduced Award amount of their approved items.

5. MUTUAL INDEMNIFICATION. To the full extent permitted by law, each Party will indemnify, hold harmless, release, and defend the other Parties (including their officers, elected or appointed officials, employees, volunteers, and agents) from and against any and all liability or claims (including actions, demands, damages, injuries, settlements, losses, or costs [including legal costs and attorney's fees) (collectively, "Liability") of any nature, arising out of, pertaining to, or relating to the indemnifying Party's acts or omissions under this MOU. The indemnifying party's indemnification obligations under this MOU are not limited by any limitations of any insurance held by each Party, including, but not limited to, workers' compensation insurance.

6. NO WAIVER. The waiver by any of the Parties of any breach or violation of any requirement of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU.

7. NOTICES. All notices required or authorized by this MOU shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval, or communication that any Party desires to give to any other Party shall be addressed to the other Party at the address set forth below. Any Party may change its address by notifying the other Parties of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

AMERICAN CANYON FIRE PROTECTION DISTRICT
Fire Chief
911 Donaldson Way East
American Canyon, CA 94503

CITY OF NAPA
Fire Chief
P.O. Box 660
Napa, CA 94559

CITY OF CALISTOGA
Fire Chief
1113 Washington Street
Calistoga, CA 94515

CITY OF ST. HELENA
Fire Chief
1480 Main Street
St. Helena, CA 94574

COUNTY OF NAPA
Fire Chief
951 California
Napa, CA 94559

8. COMPLIANCE WITH LAWS. In performing any services required under this MOU the Parties shall observe and comply with all applicable Federal, State, and local laws, ordinances, and codes.

9. AUTHORITY TO CONTRACT. The Parties each warrant hereby that they are legally permitted and otherwise have the authority to enter and perform this MOU.

10. PRIVILEGES AND IMMUNITIES. In accordance with California Government Code section 6513, all of the privileges and immunities from liability, all exemptions from laws, ordinances and rules, and all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of the trustees, officers, employees or agents of the Parties when performing their functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties associated with performance of this MOU.

11. THIRD PARTY BENEFICIARIES. Nothing contained in this MOU shall be construed to create any rights in third parties and the Parties do not intend to create such rights.

12. ATTORNEY'S FEES. If any of the Parties commence legal action of any kind or character to either enforce the provisions of this MOU or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

13. ENTIRETY OF CONTRACT. This MOU constitutes the entire agreement between the Parties relating to the subject of this MOU and supersedes all previous MOUs, promises, representations, understandings, and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

14. SEVERABILITY. If any term of this MOU (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, this MOU will be construed as not containing that term, and the remainder of this MOU will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the Parties' intent under this MOU.

15. COUNTERPARTS. This MOU may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

[*SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the Parties hereto have executed this MOU to be effective on the Effective Date set forth below.

CITY OF NAPA, a California Charter City:

_____
STEVE POTTER, City Manager

ATTEST:

_____
TIFFANY CARRANZA, City Clerk

Date: _____
("Effective Date")

COUNTERSIGNED:

_____
ERIKA LEAHY, City Auditor

APPROVED AS TO FORM:

_____
MICHAEL W. BARRETT, City Attorney

NAPA COUNTY, a political subdivision of the State of California

By:_____
JOELLE GALLAGHER, Chair Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: *Shana A. Bagley* Deputy County Counsel Date: January 9, 2024 *[PL No. 102056_5]*	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

AMERICAN CANYON FIRE PROTECTION DISTRICT,
a subsidiary special district of the City of American Canyon

By: _____
LEON GARCIA, Chair, Board of Directors

By:_____
GEOFF BELYEA, Fire Chief / District Clerk

By: _____
WILLIAM D. ROSS, District Counsel

CITY OF CALISTOGA
a California city

By: _____
LAURA SNIDERMAN, City Manager

By: _____
YUDIANA GALVAN, City Clerk

CITY OF ST. HELENA
a California city

By: _____
Anil Comelo, City Manager

By: _____
Cindy Tzafopoulos, City Clerk

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-06

TO: Board of Supervisors

FROM: Jennifer Yasumoto, Director of Health and Human Services Agency

REPORT BY: Jennifer Ivancie, Staff Services Analyst I

SUBJECT: Amendment No. 2 to Agreement No. 190328B with Hospital Association of Southern California (ReddiNet)

RECOMMENDATION

Approve and authorize Amendment No. 2 to Agreement No. 190328B with Hospital Association of Southern California (ReddiNet) to exchange real-time medical information, increasing the amount by $1,205 for a new maximum of $65,475 and extending the term through June 30, 2027. (Fiscal Impact: $65,475; Health and Human Services Agency Fund 2000, Public Health Division 20001; Budgeted; Discretionary)

BACKGROUND

ReddiNet is a web-based communications platform that provides real-time medical information exchange among hospitals, EMS systems, paramedics and ambulance providers, law enforcement, and 911 dispatch centers within in the County and the surrounding counties of Alameda, Contra Costa, San Francisco, Marin, Solano, and Yolo.

On June 1, 2019, Napa County entered into an agreement with ReddiNet for use of software modules to exchange real-time medical information to local and surrounding county hospitals, EMS systems, paramedics and ambulance providers, law enforcement, and 911 dispatch centers.

On December 15, 2020, the first amendment was approved to extend the agreement through December 31, 2023, and amend the fee schedules.

Today's requested action is for the approval of and authorization for the Chair to sign Amendment No. 2 to Agreement No. 190328B with Hospital Association of Southern California (ReddiNet), increasing the amount by $1,205 for a new maximum of $65,475 and extending the term through June 30, 2027 for continued use of ReddiNet, a web-based communications platform that allows Napa County's Emergency Medical Services (EMS) system to communicate real-time medical information to hospitals, paramedics and ambulance providers, and 911 dispatch centers.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Health and Human Services Agency, Public Health Division
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	While there is no mandate to contract with this vendor, this agreement allows Napa County's EMS continued use to communicate urgent information with local and surrounding hospitals, ambulance providers, and 911 dispatch centers during normal operations and disasters.
Is the general fund affected?	No
Future fiscal impact:	This Agreement terminates on June 30, 2027. Appropriations have been included in the approved Fiscal Year 2023-2024 budget and future fiscal years will be budgeted accordingly.
Consequences if not approved:	If this agreement is not approved, Napa County's EMS System will have challenges communicating urgent information with local and surrounding county hospitals, ambulance providers, and 911 dispatch centers.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

HOSPITAL ASSOCIATION of Southern California

ReddiNet® A HASC SERVICE

Second Amendment to the
ReddiNet® Master Agreement

This Second Amendment is made on January 1, 2024, by and between the Hospital Association of Southern California ("HASC") and Napa County EMS ("Customer"), amends the following terms and conditions of the ReddiNet Master Agreement ("Agreement") dated June 1, 2019, and amended on October 29, 2020.

TERMS

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties amend the Agreement as follows:

1. Article 2, section 2.1 is superseded and replaced in its entirety by the following:

   2.1 Term. This Agreement shall be effective (the "Effective Date") as of January 1, 2024, through June 30, 2027, unless this Agreement is terminated earlier in accordance with Section 2.

2. Appendix A—Payment Terms, is amended to include Appendix A-2, attached hereto and incorporated by reference herein. Any and all references to "Appendix A" shall include Appendix A-2 as of the effective date of this Amendment.

Except as provided above, the terms and conditions of the Agreement shall remain in full force and effect as originally approved and last amended.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, HASC and Customer have caused this Amendment to be subscribed in their behalf by their duly authorized officers as of the date first above written.

NAPA COUNTY EMS

By: _____

Date: _____

Printed Name: _____

Title: Chair of the Board of Supervisors

Notice of Address:

_____

_____

APPROVED AS TO FORM
OFFICE OF COUNTY COUNSEL

By: *Douglas Parker (via e-sign)*
Date: December 5, 2023

HOSPITAL ASSOCIATION OF SOUTHERN CALIFORNIA

By: _____

Date: 12/06/2023

Printed Name: George Greene

Title: President and Chief Executive Officer

Notice of Address:

515 South Figueroa St, Suite 1300

Los Angeles, CA 90071-3300

Soraya Peters 12/5/2023
Soraya Peters 12/5/2023 (Dec 5, 2023 18:44 PST)
Operational Review

Paul Y Young
Paul Y Young (Dec 6, 2023 09:15 PST)
HASC Legal Review

Appendix A-2

Napa County
ReddiNet Fees July 2024 – June 2025

Facility	Status	MCI	Messages	Assessment	Bed Capacity	FRC	Total	Annual Fees
Napa County EMS, PH, DOC, EOC and ACS	Y	Y	Y	Y	Y		5	$ 3,870
Adventist Health St. Helena Hospital	Y	Y	Y	Y	Y		5	$ 3,870
Queen of the Valley Medical Center	Y	Y	Y	Y	Y		5	$ 3,870
AMR- Napa	Y	Y		Y			3	$ 2,322
St. Helena Emergency Comm Center - Dispatch	Y	Y		Y			3	$ 2,322
Napa Central Dispatch	Y	Y		Y			3	$ 2,322
Fixed fee for up to 50 sites with Status, Assessment, and Messaging for LTCs, ASCs, Clinics, Dialysis, etc. and Bed Capacity for LTCs.								$ 2,610
TOTAL								$ 21,186

Note: Pricing does not include California state sales and use tax, if applicable.

Dashboard, Reports, Alerts, Resource Request and Evacuation are available at no additional fee.

Napa County
ReddiNet Fees July 2025 – June 2026

Facility	Status	MCI	Messages	Assessment	Bed Capacity	FRC	Total	Annual Fees
Napa County EMS, PH, DOC, EOC and ACS	Y	Y	Y	Y	Y		5	$ 3,985
Adventist Health St. Helena Hospital	Y	Y	Y	Y	Y		5	$ 3,985
Queen of the Valley Medical Center	Y	Y	Y	Y	Y		5	$ 3,985
AMR- Napa	Y	Y		Y			3	$ 2,391
St. Helena Emergency Comm Center - Dispatch	Y	Y		Y			3	$ 2,391
Napa Central Dispatch	Y	Y		Y			3	$ 2,391
Fixed fee for up to 50 sites with Status, Assessment, and Messaging for LTCs, ASCs, Clinics, Dialysis, etc. and Bed Capacity for LTCs.								$ 2,688

TOTAL $ 21,816

Napa County
ReddiNet Fees July 2026 – June 2027

Facility	Status	MCI	Messages	Assessment	Bed Capacity	FRC	Total	Annual Fees
Napa County EMS, PH, DOC, EOC and ACS	Y	Y	Y	Y	Y		5	$ 4,105
Adventist Health St. Helena Hospital	Y	Y	Y	Y	Y		5	$ 4,105
Queen of the Valley Medical Center	Y	Y	Y	Y	Y		5	$ 4,105
AMR- Napa	Y	Y		Y			3	$ 2,463
St. Helena Emergency Comm Center - Dispatch	Y	Y		Y			3	$ 2,463
Napa Central Dispatch	Y	Y		Y			3	$ 2,463
Fixed fee for up to 50 sites with Status, Assessment, and Messaging for LTCs, ASCs, Clinics, Dialysis, etc. and Bed Capacity for LTCs.								$ 2,769

TOTAL $ 22,473

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-07

TO: Board of Supervisors

FROM: Jennifer Yasumoto, Director of Health and Human Services Agency

REPORT BY: Jennifer Ivancie, Staff Services Analyst I

SUBJECT: Agreement No. 240204B with On the Move, Inc. (Transitional Housing Program and Housing Navigation and Maintenance Program)

RECOMMENDATION

Approve and authorize Agreement No. 240204B with On the Move, Inc., for a contract maximum of $164,892 for the Transitional Housing Program (THP) Round 5 and Housing Navigation and Maintenance Program (HNMP) Round 2 grant allocations from the California Department of Housing and Community Development (HCD). (Fiscal Impact: $164,892; Health and Human Services Agency Fund 2000, CWS Division 20004; Budgeted; Discretionary)

BACKGROUND

HCD provides funding to Napa County through THP and HNMP allocation awards for the support of housing navigators to help youth aged 18 years and up to 24 years, secure and maintain housing, with priority given to youth in the foster care system. The funds may be used to provide housing navigation services directly or through a contract with other housing assistance programs in the county.

Voice Our Independent Choice for Emancipation Support (VOICES) is a program of On the Move, Inc., whose mission is to empower underserved youth, by utilizing holistic services throughout their transition from systems of care, while building a loving community and establishing a solid foundation for a healthy future. VOICES has direct access to Transitional Age Youth (TAY) by way of their Youth Service Center and Wellness Centers where youth in Napa County are offered support through workshops, counseling, resources, and referrals. VOICES is the most logical option for managing the THP and HNMP services, as they are a first stop for youth in need of help if they are housing insecure or homeless. These services are especially important for assisting these youth transition to independent living arrangements.

The increased cost of housing in Napa County and surrounding counties poses a challenge to former foster youths who may be underemployed and/or have a limited support system of family and friends. Nationwide, 50% of the homeless population have spent time in foster care.

The housing needs of youth in foster care are great and this agreement would enable the County to continue collaborating with a community partner to locate, procure, and maintain housing for youth, in or formerly in foster care or the probation system as they transition to independent living arrangements.

On the Move/VOICES is a local vendor and is already administering housing navigation services to TAY in Napa County, through an agreement that uses previous allocation awards of THP and HNMP that were awarded from HCD.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Health and Human Services Agency, Child Welfare Services Division
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	There is no mandate to contract for these services, however, On the Move/VOICES is a first stop for many TAY and is already providing these services, through a prior agreement.
Is the general fund affected?	No
Future fiscal impact:	Appropriations have been included in the approved Fiscal Year 2023-2024 budget and future fiscal years will be budgeted accordingly.
Consequences if not approved:	If not approved, the County will not have access to the resources On the Move/VOICES provides to address the continued housing needs of youth in foster care or formerly in foster care.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY AGREEMENT NO. 240204B
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the 1st of July 2023, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and **ON THE MOVE**, whose mailing address is 780 Lincoln Ave., Napa, CA 94558, hereinafter referred to as "CONTRACTOR." COUNTY and CONTRACTOR may be referred to below collectively as "Parties" and individually as "Party."

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services in order for CONTRACTOR to administer the Transitional Housing Program (THP) and Housing Navigation and Maintenance Program (HNMP); and CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

TERMS

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the Terms and Conditions and their own Exhibits, which together are attached hereto and incorporated by this reference as though set forth in full herein. The Section numbers of any portion of this Agreement may at times be referred to either as "Sections" or "Paragraphs" interchangeably.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto as of the date first above written.

NAPA COUNTY, a political subdivision of the State of California	**CONTRACTOR**
By _____ **JOELLE GALLAGHER, Chair of the Board of Supervisors** ATTEST: NEHA HOSKINS, Clerk of the Board By: _____ DATE APPROVED BY THE BOARD: _____ Processed by: _____ Deputy	Alissa dy Abdo **ALISSA ABDO** Executive Director **JOHN WAY** Director of Finance and Operations

Maximum Amount of this Agreement: $164,892.00 per fiscal year Term Expires: June 30, 2024 Automatic renewal of term is modified.	APPROVED AS TO FORM BY NAPA COUNTY COUNSEL By: *Douglas Parker (via e-sign)* Date: December 5, 2023

TERMS AND CONDITIONS OF NAPA COUNTY AGREEMENT NO. 240204B

SECTION 1. Contract Administration

For purposes of this Agreement, the following shall apply:

1.1 "Department" shall mean: Health and Human Services Agency

1.2 "Director" shall mean the person elected or appointed to the chief management position of the Department.

1.3 "Contract Administrator" shall be: Contracts Analyst or such other person as designated by the Department Director. The address for COUNTY's Contract Administrator shall be: 2751 Napa Valley Corporate Drive, Building B, 2nd Floor, Napa, CA 94559.

1.4 The Program Manager for COUNTY shall be: Veronica Piper-Jefferson, 2751 Napa Valley Corporate Dr., Bldg. B, Napa, CA 94558.

1.5 The Contract Contact Person for CONTRACTOR shall be: Amber Twitchell, 780 Lincoln Ave, Napa, CA 94558.

1.6 CONTRACTOR is a [ ] sole proprietor [ ] partnership [X] corporation [ ] public agency [ ] other (specify) .

1.7 The source of funding for this Agreement shall be: State of California - Department of Housing and Community Development Agreement 22-TAY-17736.

1.8 In entering into this Agreement, CONTRACTOR acknowledges and agrees to abide by the applicable terms of the following COUNTY-entity agreements, and as they may amended from time to time: Napa County Agreement No. 230391D

These agreements are on file with the Napa County Clerk of the Board of Supervisors and may be accessed at **https://www.countyofnapa.org/DocumentCenter/** under "Departments/Health and Human Services/Administration/Contracts and Administration Documents" (See also Section 2, Paragraphs 2.15(b)(2) and 2.35)

SECTION 2. General Terms and Conditions.

Attached hereto and incorporated by this reference as Exhibit C is "SECTION 2. General Terms and Conditions – Version 12", which shall be referred to herein as the "General Terms and Conditions" and which shall apply to this Agreement unless otherwise specifically limited or excluded by more specific provisions.

Due to changes in the laws, future versions of General Terms and Conditions shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR, effective within such time period as is designated in Paragraph 2.10 (Other Termination) plus 15 days or as mandated by local, state or federal laws or regulations, whichever date is sooner.

SECTION 3. Specific Terms and Conditions.

The following Specific Terms and Conditions provide additional terms and conditions or modify the General Terms and Conditions of this Agreement. A Specific Term and Condition shall control if a conflict exists with a General Term and Condition.

3.1 The following Specific Terms and Conditions apply when CONTRACTOR's obligations under this Agreement involve the following as designated by an "X":

[X] (a) Contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (General Terms and Conditions Paragraph 2.8(b) applies).

[ ] (b) Construction or pre-construction related services (General Terms and Conditions Paragraph 2.19(e) applies).

[ ] (c) Work on or the supplying of any software systems or equipment containing or suspected of containing clocks or embedded chips functioning as or dependent upon the use of clocks or calendars (General Terms and Conditions Paragraph 2.29 applies).

[ ] (d) Services covered by a Federal Health Care Program (General Terms and Conditions Paragraph 2.31 applies).

[ ] (e) Services covered by a State Medi-Cal Specialty Mental Health Program (General Terms and Conditions Paragraph 2.32 applies).

[ ] (f) Mental Health Activities (General Terms and Conditions Paragraph 2.33 applies).

[ ] (g) Services involving the receipt, use or disclosure of protected health information: A determination has been made by COUNTY's Privacy Officer that CONTRACTOR shall not provide services under this Agreement as a Business Associate to COUNTY. General Terms and Conditions Paragraph 2.34(b) does not apply to this Agreement.

[ ] (h) Services provided under COUNTY's Managed Care Provider Program, which shall be subject to all the terms and conditions set forth in the Napa County Mental Health Managed Care Provider Manual, herein incorporated by reference and on file with the Clerk of the Napa County Board of Supervisors.

[ ] (i) Services as a provider for which CONTRACTOR has submitted a "Provider Application," which CONTRACTOR warrants that the information contained in said application is accurate and understands that any inaccuracies may be grounds for termination of this Agreement by COUNTY. CONTRACTOR authorizes COUNTY to consult with third parties, including but not limited, to the National Practitioner Data Bank or other applicable licensing boards.

[X] (j) Services involving the use or disclosure of personally identifiable information that are performed as a subcontractor under COUNTY's contract with another entity when that contract requires COUNTY to include its applicable terms in COUNTY's subcontracts. (General Terms and Conditions Paragraph 2.35 applies.)

[ ] (k) Services determined by the Department Director to be covered by Department's Code of Ethics. (General Terms and Conditions Paragraph 2.38 applies.) CONTRACTOR understands that, by entering into this Agreement, CONTRACTOR acknowledges that CONTRACTOR has received, read, and understands the Code of Ethics, and agrees to abide by

the terms therein as applicable to CONTRACTOR's activities under this Agreement. Department shall provide CONTRACTOR with copies of Department's Code of Ethics prior to the execution of the Agreement. CONTRACTOR further understands that on an annual basis CONTRACTOR shall provide written certification to Department that CONTRACTOR has received, read, understands, and will abide by Department's Code of Ethics.

[X] (l) Services have been determined by the Department Director, or may be determined at a later date, that CONTRACTOR is a subrecipient or pass-through entity and is therefore required to meet all of the requirements found in 2 C.F.R. § 200.331. (General Terms and Conditions 2.40 applies.) COUNTY shall notify CONTRACTOR in accordance with General Terms and Conditions Paragraph 2.13 (Notices), of any change in designation as a subrecipient, and any subsequent increase to the amount of Federal funding CONTRACTOR shall receive under the terms of this Agreement. CONTRACTOR shall be bound thereby upon receipt of notice.

3.2 Source Funding.

(a) Change in Source Funding. Paragraph 1.7 may be unilaterally modified by COUNTY upon written notice to CONTRACTOR who shall be bound thereby immediately upon receipt. The Department Director is delegated the authority to modify Paragraph 1.7 and provide such written notice, but may exercise such authority only after consultation with, and concurrence of, the Napa County Counsel and the Napa County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Napa County Board of Supervisors to modify Paragraph 1.7.

(b) Amendment to Source Funding Agreement. If Paragraph 1.7 identifies a funding source agreement, then any amendment to the funding source agreement shall be automatically incorporated and made a part of this Agreement, effective in accordance with the amended funding source agreement. As a subcontractor of COUNTY, CONTRACTOR shall be bound by the applicable terms of the funding source agreement, and any amendments thereto.

3.3 Statement of Economic Interests. By authorizing its Chair to execute this Agreement on its behalf, COUNTY's Board of Supervisors hereby determines in writing on behalf of COUNTY that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with the disclosure obligations set forth in Paragraph 2.23(b).

3.4 General Terms and Conditions 2.1(b)-Automatic Renewal is modified to read in full as follows:

> The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, until the final renewal period, which concludes on **June 30, 2025,** under the same terms and conditions, unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Termination for Convenience) or 2.23 (a) (Covenant of No Undisclosed Conflict). The obligations of the Parties under Paragraphs 2.7 (Insurance) and 2.8 (Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes) and 2.21 (Access to Records/Retention).

3.5 COUNTY delegates its authority to the Director of the Health and Human Services Agency to approve future amendments to Exhibits A and B, attached to this Agreement, provided that any such amendment does not materially alter the nature of the services to be provided or increase the maximum compensation available under this Agreement.

SECTION 4. Incorporated Documents.

The following documents are incorporated herein by this reference and attached hereto and labeled as the following Exhibit letters:

Exhibit A: Scope of Work (attached)
Exhibit B: Compensation and Financial Reporting (attached)
Exhibit C: "Section 2, General Terms and Conditions, Version 12" (attached)

EXHIBIT "A"
SCOPE OF WORK
July 1, 2023 through June 30, 2024
(and each subsequent automatic renewal, terminating no later than June 30, 2025)

I. BACKGROUND

Pursuant to the Housing Navigation and Maintenance Program (HNMP) item 2240-103-0001 of Section 2.00 of the Budget Act of 2022 (Chapter 43 of the Statutes of 2022) and Chapter 11.9 (commencing with Section 50811) and the Transitional Housing Program (THP) item 2240-102-0001 of Section 2.00 of the Budget Act of 2022 (Chapter 249 of the Statutes of 2022) and Chapter 11.7 (commencing with Section 50807) of Part 2 of Division 31 of the Health and Safety Code (HSC), the Department of Housing and Community Development (HCD) has allocated funding for the support of housing navigators and housing stability to help youths who are 18 - 24 years of age inclusive (meaning starting at their 18th birthday until their 25th birthday), secure and maintain housing, with priority given to young adults currently or formerly in the foster care or probation systems.

II. SERVICES

CONTRACTOR shall provide the following services with priority given to youths who are 18-24 years of age inclusive, formerly, or currently in the foster care or probation systems.

A. Identifying and assisting with housing services for this population within the community.
   - Providing housing navigation services to support youths in locating safe and stable housing;
   - Supporting youths to work with landlord to secure rental agreement and lease documents; and
   - Providing access to direct housing support including payment of security deposit and first month rent.

B. Helping this population secure and maintain housing with priority given to those formerly in the state's foster care or probation system.
   - Providing case management services to support youths in maintaining housing; and
   - Supporting youths with housing insecurity by providing access to emergency rental assistance in order to prevent homelessness.

C. Improving coordination of services and linkages to community resources within the child welfare system and Continuum of Care (CoC) programs.
   - Actively communicating with the youth's support systems including ongoing communication with Social Workers (SW) and/or Case Workers (CW); and
   - Participation in Napa CoC in order to represent the needs of transitional age youths (TAY).

D. Outreach and targeting to serve those with the highest level of need, may include:
    - Conducting outreach activities to TAY at specific locations and events in the community;
    - Outreach activities may include: presentations to TAY, caregivers and/or other supportive adults in the community; staffing booths at resource fairs; staffing information booths; creating flyers, informational newsletters, social media postings, and e-blasts about the program and/or specific resources; and
    - Connecting TAY to housing resources by submitting applications.

E. CONTRACTOR shall provide Housing Navigators to act as housing specialists to assist youths locate available housing and overcome barriers to locating housing. Housing navigator activities may include, but are not limited to:
    - Assist young adults in the foster care system or formerly in the foster care system who are 18-24 years of age inclusive, secure and maintain housing to prevent youths from becoming homeless; and
    - Provide training to Child Welfare Services (CWS) Social Workers (SW) and Probation officers who serve nonminor dependents. The training shall address:
        a. Overview of the housing resources available through the local coordinated entry system, homeless CoC, and county public agencies including, housing navigation, permanent affordable housing, THP-Plus, and housing choice vouchers;
        b. The training shall also address how to access and receive a referral to existing housing resources; and
        c. The SW and Probation officer's role in identifying unstable housing situations for youths and referring youths to housing assistance programs.

F. CONTRACTOR shall complete an intake form for each youth served.
    - All necessary information and demographics will be accurately recorded and reported in accordance with the terms outlined in this Agreement.

III. CONTRACT MONITORING

A. CONTRACTOR is responsible for maintaining all documentation required for monitoring. This includes maintaining books, records, documents, and other evidence that demonstrates the funding was used for the appropriate purposes, as listed in the Scope of Work. These books, records, documents, and other evidence shall be made available for audit and inspection by the COUNTY and HCD for a period of five (5) years.

B. CONTRACTOR must keep specific details of the use of the funds for the purpose of semi-annual reporting. A reporting form shall be submitted every six (6) months for three (3) years subsequent to the contract execution. By January 15th of each reporting year, the CONTRACTOR shall submit a report to the COUNTY, covering the reporting period of July 1st to December 31st and by July 15th of each reporting year, covering the reporting period of January 1st to June 30th addressing the THP and HNMP reporting requirements, to include, but not limited to the following:
   - The number of homeless youths served;
   - Description of how Child Welfare Services (CWS) identified and oversaw the housing navigators and the HNMP;
   - The number of current and former foster youths served;
   - The number of people served who are currently and formerly on probation;
   - The number of homeless youths who exited homelessness into temporary housing;
   - The number of youths who exited homelessness into permanent housing; and
   - Subpopulation data including;
     a. Number of participants that are employed;
     b. Number of participants that are students;
     c. Number of participants identified as LGBTQ+;
     d. Number of participants with a disability;
     e. Number of participants with their own minor children in the household;
     f. Average number of children per household including participants own child(ren); and
     g. Average number of household occupants where participants reside.

C. CONTRACTOR maintains responsibility for ensuring that its services and activities are in compliance with applicable regulations.

D. CONTRACTOR shall participate in quarterly meetings of CONTRACTOR and COUNTY staff to discuss the number of youths receiving THP and HNMP services, the referral process, and other operational issues. Expenditures to-date and the need for possible contract amendments are reviewed.

E. CONTRACTOR shall be available for direct contact by the COUNTY staff in order to maintain open communication and sharing of information regarding mutual youths in the administration of THP and HNMP Programs.

F. COUNTY program staff shall provide CONTRACTOR with all regulations and policies related to administering the THP and HNMP Programs.

IV. DOCUMENTATION

A. CONTRACTOR shall document the services provided under this Agreement in a form acceptable to the COUNTY, in addition to any requirements specified in the General Terms and Conditions.

B. CONTRACTOR shall provide COUNTY with access to all documentation of services provided under this Agreement for COUNTY's use in administering this Agreement. Without limitation, COUNTY shall have access to such documentation for quality assurance and for audit and substantiation of claims for payment of services.

C. Upon written notice from CONTRACT ADMINISTRATOR, COUNTY at its sole discretion may impose additional requirements for documentation.

V. CONFIDENTIALITY

A. CONTRACTOR shall at all times perform its duties under this Agreement in compliance with the confidentiality requirements of applicable law.

B. CONTRACTOR shall maintain written policies and procedures implementing applicable confidentiality requirements, which shall be made available to COUNTY upon request.

C. CONTRACTOR shall provide all employees assigned to the performance of this Agreement with information and training with respect to the requirements listed above and shall maintain documentation of such training. The documentation shall be made available to COUNTY upon request.

D. CONTRACTOR shall not disseminate information received during any assessment, evaluation, interview, or other contact regarding any minor child in any form to anyone other than Napa County CWS or employees or agents of CONTRACTOR in the performance of CONTRACTOR's official duties, pursuant to Welfare and Institutions Code Section 827**. Dissemination of any information is disallowed regardless of whether it is in written or oral form.**

EXHIBIT "B"
COMPENSATION AND FINANCIAL REPORTING
July 1, 2023 through June 30, 2024
(and each subsequent automatic renewal, terminating no later than June 30, 2025)

CONTRACTOR shall be compensated as listed in the table below.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHC)	AMOUNT
TRANSITIONAL HOUSING PROGRAM (THP)	
Personnel Expenses 0.5 FTE	$62,689
Indirect Costs (calculated at 10%)	$6,269
Direct Costs: • Security Deposit • 1st Month Rent • Emergency Rental Assistance (homelessness prevention)	$60,561
SUBTOTAL	**$129,519**
HOUSING NAVIGATION & MAINTENANCE PROGRAM (HNMP)	
Personnel Expenses 0.35 FTE	$32,157
Indirect Costs (calculated at 10%)	$3,216
SUBTOTAL	**$35,373**
TOTAL	**$164,892**

CONTRACTOR agrees that all funds shall be used to help youths who are 18-24 years of age inclusive, herein meaning starting at their 18th birthday until their 25th birthday, secure and maintain housing.

CONTRACTOR agrees that priority shall be given to youths currently or formerly in the foster care or probation systems.

CONTRACTOR shall provide documentation as required by COUNTY at any time in order to substantiate its claims for payment.

CONTRACTOR's services and claims are subject to audits conducted by the Department, State of California, or any other auditor. Any resulting audit exemptions shall be repaid to COUNTY.

CONTRACTOR shall prepare and submit an invoice **thirty (30) days after the conclusion of each calendar month in which services were provided**. Invoice shall include back up documentation pertinent to the annual reporting criteria addressed in the scope of work and include date of service, service provided and name of youth receiving service.

CONTRACT MAXIMUM SHALL NOT EXCEED $164,892

EXHIBIT C

SECTION 2. GENERAL TERMS AND CONDITIONS --VERSION 12

2.1 **Term of the Agreement.**

(a) Term. The term of this Agreement shall commence on the date first written on page 1 and shall expire on the expiration date set forth on page 1 unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Other Termination) or 2.23(a) (Covenant of No Undisclosed Conflict).

(b) Automatic Renewal. The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the same terms and conditions, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30. COUNTY authorizes the Department Director to determine whether this Agreement shall not be renewed and to provide the written notice of the intention to not renew on behalf of COUNTY.

(c) Obligations Extending Beyond Term. The obligations of the parties under Paragraphs 2.7 (Insurance) and 2.8 (Hold Harmless/Defense/Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes), 2.21 (Access to Records/Retention), 2.31 (Compliance with Federal Health Care Program Requirements, 2.32 (Compliance with State Medi-Cal Specialty Mental Health Services Requirements), and 2.33 (Compliance with Mental Health Activities Requirements). To the extent the paragraphs referenced in this Paragraph 2.1 may be modified by Specific Terms and Conditions contained in SECTION 3 of this Agreement, the modifications shall also continue after the expiration date or early termination.

2.2 **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A."

2.3 **Compensation.**

(a) Compensation/Maximum. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates and/or in the amount(s) set forth in Exhibit "B". The maximum payment for the initial term of this Agreement, and the successive maximum payments for each subsequent automatically renewed term, shall each be that maximum amount set forth on page 1; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

(b) Advance Funding.

1. Use of Funds. To the extent this Agreement may permit advance funding of services and expenses, use of funds delineated in this Agreement is limited to the term of performance unless otherwise modified in accordance with Paragraph 2.17

(Amendment/Modification). COUNTY may at its discretion recapture funds obligated under the authority of this Agreement if expenditure plans are not being met.

2. Reversion of Funds. If funds awarded to CONTRACTOR have not been expended in accordance with this Agreement and COUNTY has determined after consultation with CONTRACTOR that funds will not be spent in a timely manner, such funds will revert to COUNTY for that reason and to the extent permitted by and in a manner consistent with federal and state law, regulations, and policies.

(c) Availability of Funds. It is mutually understood that, for the benefit of both parties, this Agreement may have been written before ascertaining the availability of congressional and/or state legislative appropriation of funds in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. If funding of this Agreement is dependent upon the availability of congressional and legislative appropriation of funds, then:

1. This Agreement shall be deemed automatically terminated if the Congress and and/or the State Legislature do not appropriate funds needed for this Agreement;

2. At COUNTY's discretion, this Agreement may be deemed automatically terminated or this Agreement may be modified or amended in accordance with Paragraph 2.17 (Amendment/Modifications), if the Congress and/or State Legislature do not appropriate sufficient funds needed for this Agreement; and

3. This Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or State Legislature, or any statute enacted by the Congress or State Legislature, that may in any manner affect the provisions, terms, or funding of this Agreement.

(d) COUNTY may withhold any compensation due CONTRACTOR as an offset for any revenues lost arising from an act or omission in billing or documentation practices by CONTRACTOR. CONTRACTOR shall make COUNTY whole for any such lost revenues.

2.4 **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Where expense reimbursement is sought, the invoice shall describe the nature and cost of the expense, the task(s) if any to which the expense was related, and the date incurred. CONTRACTOR shall submit invoices not more often than monthly to the Contract Administrator. After review and approval as to form and content, the invoice shall be submitted to the Napa County Auditor no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Contract Administrator upon request during the term of this Agreement in a form satisfactory to the Napa County Auditor. Such proof shall

include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

2.5 **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

2.6 **Specific Performance.** It is agreed that CONTRACTOR, including the agents, employees and authorized subcontractors of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

2.7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 2.7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the Health and Human Services Agency prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 2.7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 2.7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20

10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 2.7.

(f) 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, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2.8 **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees or volunteers or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Obligations Relating to Criminal Background Checks.

1. If CONTRACTOR's obligations under this Agreement involve contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (hereafter in this paragraph referred to as "third persons"), then CONTRACTOR shall investigate by all lawful means, including but not limited to obtaining information from official government sources as the result of taking fingerprints, the criminal background of each and all of its officers, agents, employees, interns, and volunteers, however denominated (hereafter, "employees"), who

will have direct personal contact with, or provide direct personal services to, third persons in the performance of this contract. Depending upon the information acquired by its investigation, CONTRACTOR shall not allow any of its employees to have personal contact with, or provide direct personal services to, third persons where it may reasonably be concluded as a result of its investigation that an employee should not have such contact or provide such service. Nothing herein requires CONTRACTOR to investigate the criminal background of an employee who is currently licensed by the State of California and whose license requires a criminal background investigation.

2. Notwithstanding anything to the contrary in (a) or (c), CONTRACTOR shall defend and indemnify COUNTY and its officers, agents and employees from any and all claims, actions, settlements or judgments of whatever kind which may arise from the failure of CONTRACTOR to conduct the criminal background investigation described in this subparagraph (b) or from the failure of CONTRACTOR after the investigation to reasonably disallow an employee from having such personal contact or providing such direct personal service.

(c) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

2.9 **Termination for Cause.**

(a) If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days written notice to the defaulting party in the manner set forth in Paragraph 2.13 (Notices).

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

2.10 **Other Termination.**

(a) This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty
(30)
days prior to the effective date; provided, however, that no such termination may be effected by

COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination.

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

2.11. **Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement, if and to the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(b) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof.

(c) Notwithstanding the provisions set forth in subparagraph (b) above, if the services involve development or improvement of previously patented inventions or previously copyrighted software, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(d) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of notice of termination and completed satisfactorily prior to the effective date of the

termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

2.12 **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

2.13 **Notices**.

(a) In General. Except as set forth in subparagraph (b) below with respect to notice of automatically adopted provisions, all notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this subparagraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier. Any mailed notice, demand, request, consent, approval or communication that COUNTY desires to give to CONTRACTOR shall be addressed to CONTRACTOR's Contract Contact Person at the mailing address set forth in SECTION 1 of this Agreement. Any mailed notice, demand, request, consent, approval or communication that CONTRACTOR desires to give to COUNTY shall be addressed to COUNTY's Contract Administrator at the mailing address set forth in SECTION 1 of this Agreement. Either party may change its address by notifying the other party of the change of address.

(b) Provisions Adopted Automatically. COUNTY reserves the right to provide notice to CONTRACTOR via facsimile of terms, which automatically become part of this Agreement upon approval by the Napa County Board of Supervisors. Notice delivered by facsimile shall be deemed to have been received on the date a successful delivery confirmation report is generated.

(c) Waiver of Notice by CONTRACTOR. If receipt of notice is refused by CONTRACTOR or if notice is undeliverable due to CONTRACTOR's failure to provide a change of address, notice shall be deemed waived and COUNTY may proceed as though notice were accomplished.

2.14 **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. Future versions of the following policies shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR pursuant to Paragraph 2.13. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment."

(c) Drug and Alcohol Policy.

(d) Napa County Information Technology Use and Security Policy. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

2.15 **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to or created by CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive or create, if any, in trust and confidence, except with the prior written approval of COUNTY, as expressed through the Department Director. Upon cancellation or expiration of this Agreement, to the extent permitted by law, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR agrees to adhere to the applicable terms regarding the privacy and security of Protected Information as set forth in the COUNTY-entity agreements identified in Paragraph 1.8 of Section 1 of this Agreement (Contract Administration). CONTRACTOR shall also observe and comply with those requirements set forth in "Addendum For Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(3) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 2.15.

(4) CONTRACTOR agrees to notify COUNTY, by and through the Napa County Privacy Officer at 2751 Napa Valley Corporate Dr. Suite B, Napa, CA 94559, or 707.253-4715, immediately in the following instances:

(A) Upon the discovery of a breach of PHI/PII/other Protected Information in electronic or other media;

(B) Upon the discovery that PHI/PII/other Protected Information was, or is reasonably believed to have been accessed or acquired by an unauthorized person;

(C) Upon the discovery of a suspected security incident that involves PHI/PII/other Protected Information; or

(D) Upon the discovery of any breach, security incident, intrusion, or unauthorized access, use, or disclosure of PHI/PII/other Protected Information.

(5) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of PHI/PII/other Protected Information, or its unauthorized access to or disclosure of PHI/PII/or other Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) To the extent CONTRACTOR creates, is provided, or has access to applications and records concerning any individual made or kept by COUNTY in connection with public social services (records) as defined in California Welfare & Institutions Code Section 10850, CONTRACTOR shall maintain the confidentiality of such records in accordance with Section 10850, except as otherwise permitted by COUNTY and as necessary for purposes of providing services under this Agreement.

(d) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

(e) HHSA Contractor Security Requirements. Whenever CONTRACTOR utilizes their own equipment to perform work under this Agreement , CONTRACTOR warrants that they have reviewed "HHSA Contractor Security Requirements" and can adhere to the minimum standards at all time. A copy of "HHSA Contractor Security Requirements" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

2.16 **No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Department Director.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

2.17 **Amendment/Modification.**

(a) Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only COUNTY, by the Department Director (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed $10,000), or by COUNTY's Purchasing Agent (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed the maximum aggregate amount for Purchasing Agent contracts as specified by Napa County Code section 2.36.040 (G)) or by COUNTY's Board of Supervisors (in all other instances), in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by "Exhibit A." Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

(b) Notwithstanding anything to the contrary in (a), this Agreement may be unilaterally modified by COUNTY upon written notice to CONTRACTOR under the following circumstances:

1. There is a decrease in state or federal funding needed for this Agreement;
2. There is a no-cost extension of the end date of the Agreement as authorized by a state or federal funding source; or
3. There is a change in state/federal law or regulation requiring a change in a provision of this Agreement.

(c) The Department Director is delegated the authority to modify this Agreement in accordance with subparagraph (b), but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to modify this Agreement under subparagraph (b).

2.18 **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

2.19 **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. **CONTRACTOR acknowledges its independent duty to be and to remain informed of all changes in such laws without reliance on COUNTY to provide notice of such changes.** Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS, use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Federal Grant Source. Notwithstanding anything to the contrary in this Agreement, if the funds for this Agreement are derived from a grant from a federal agency, pursuant to 29 CFR 97.36(i)(8) and (9), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the federal granting agency with respect to any discovery or invention which arises or is developed pursuant to this Agreement, and pertaining to any copyrights or rights in data created or otherwise developed when engaging in activities of CONTRACTOR under this Agreement. The requirements and regulations imposed by the federal granting agency are set forth in the original grant agreement specified in Section 1 of the Agreement and are incorporated by reference herein. The original grant agreement is on file with the Clerk of the Board of Supervisors.

(d) Prevailing Wages. If the services to be provided relate to construction or pre-construction-related services, including but not limited to testing, surveying, and inspection, then this Agreement includes the following provisions:

(1) Affected work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing wages rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or his designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and

payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is $30,000 or more.

(e) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 2.19 in all such subcontracts as obligations of the subcontractor.

(f) Notwithstanding any other provisions of this contract, CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement.

2.20 **Taxes.** CONTRACTOR agrees to file all applicable federal and state tax returns or applicable withholding documents and to pay all applicable taxes or to make all required withholdings on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

2.21 **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records, including clinical documentation, for at least ten (10) years after COUNTY makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

2.22 **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement. The parties further warrant that the signatories to this Agreement are authorized to execute this Agreement on behalf of their respective parties and that any action necessary to bind each such party has been taken by that party prior to entering into this Agreement.

2.23 **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY

may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement. The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors terminate this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless COUNTY, through a person authorized to execute this Agreement on behalf of COUNTY, or the Department Director, has determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

2.24 **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the general public.

2.25 **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

2.26 **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

2.27 **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

2.28 **Entirety of Contract.** This Agreement, including documents incorporated by reference and not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

2.29. **Other Terms and Conditions [Reserved.]**

2.30 **Acknowledgment of Funds; Compliance with Government Code Section 7550.**

(a) **In General.** Because the monies provided by COUNTY are funded by taxpayer dollars, it is important that the public know the individuals and organizations that are receiving funds from COUNTY under this Agreement. Therefore, CONTRACTOR shall acknowledge funding received under this Agreement in statements or printed materials relating thereto. All printed materials shall contain the following information in a type size and style appropriate to the materials: "Made possible by funding provided by the County of Napa."

(b) **Compliance With Government Code Section 7550**. In addition, if the Scope of Work includes preparation of a document or written report and the total cost of the work is more than $5,000, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report as required by Government Code section 7550. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

2.31 **Compliance with Federal Health Care Program Requirements.** If CONTRACTOR will be performing services under this Agreement that are covered by a Federal Health Care Program, then:

(a) CONTRACTOR shall observe and comply with all applicable Federal Health Care Program Requirements, including but not limited to those requirements set forth in "Addendum For Contracts Involving Federal Health Care Programs—Revision of March 22, 2021." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and is online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall attend and/or provide Compliance Trainings as required by the Department Director unless otherwise deemed exempt by the Department Director or designee thereof.

(c) CONTRACTOR shall make COUNTY whole for any revenues lost arising from an act or omission in billing practices by CONTRACTOR.

(d) CONTRACTOR warrants that no one providing services is an Excluded Individual as such term is defined for Federal Health Care Programs.

(e) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contractors Involving Federal Health Care Programs". Said penalties and fines that may be

assessed are as follows: civil monetary penalties of $11,000 per item or service; treble damages for the submission of claims for reimbursement from an excluded health care provider.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the Addenda in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR agrees to abide by COUNTY'S policies entitled "Whistleblower Protections", "The False Claims Act (Federal & State Statutes) & Other Administrative Remedies & Statutes", **"**Federal Anti-Kickback Prohibitions" and "Physicians Referrals – The Stark Law". The policies are on file with the Clerk of the Napa County Board of Supervisors and the Department and are also online at: www.countyofnapa.org.

(i) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.32 **Compliance with State Medi-Cal Specialty Mental Health Services Requirements.** If CONTRACTOR, under this Agreement, is required to and performs services that are covered by a State Medi-Cal Specialty Mental Health Services Program, then:

(a) CONTRACTOR shall observe and comply with all applicable State Medi-Cal Specialty Mental Health Services Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Medi-Cal Specialty Mental Health Services--Revision No. 1" for services performed on or after July 1, 2014. The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator, or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(c) CONTRACTOR is subject to any audits of its services or claims conducted by the Department, the California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(d) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, disallowances for payment or lost revenues identified and discovered by COUNTY that are attributable to CONTRACTOR's actions when performing its obligations under this Agreement, such as insufficient documentation by CONTRACTOR of Medical Necessity or billing errors by CONTRACTOR that preclude COUNTY from claiming the Federal Financial Participation share of Medi-Cal or State General Funds.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the applicable Addendum in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.33 **Compliance with Mental Health Activities Requirements.** If CONTRACTOR, under this Agreement, is required to perform mental health activities, then:

(a) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(b) CONTRACTOR shall be subject to any audits of its services or claims conducted by Department, California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(c) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, lost revenues as identified and discovered by the COUNTY that are attributable to CONTRACTOR's performance under this Agreement such as CONTRACTOR's insufficient documentation of services as required by the Agreement.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable requirements.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party; CONTRACTOR shall include the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.34 **Compliance with Federal Health Insurance Portability and Accountability Act of 1996.** If CONTRACTOR shall perform services under this Agreement involving the receipt, use, or disclosure of protected health information, then:

(a) Federal and other applicable law. CONTRACTOR shall observe and comply with all applicable requirements of the Federal Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder by the U.S. Department of Health and Human Services (collectively referred to as "HIPAA"), and other applicable laws.

(b) HIPAA Business Associate Agreement. If applicable, CONTRACTOR shall comply with the terms and conditions of the HIPAA Business Associate Agreement previously entered into with COUNTY, which is incorporated by reference herein and on file with the Clerk of the Board of Supervisors.

(c) Use or Disclosure of Protected Health Information. CONTRACTOR may use or disclose protected health information for the purpose of performing functions, activities for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate HIPAA, if done by COUNTY, or the provisions of any applicable HIPAA Business Associate Agreement.

(d) Subcontractors. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall require compliance with all applicable HIPAA provisions, other applicable law, and any applicable HIPAA Business Associate Agreement(s) in such subcontracts as obligations of the subcontractor.

2.35 **Compliance With COUNTY's Obligations Under Contracts With Other Entities.** If CONTRACTOR under this Agreement shall perform services as a subcontractor under COUNTY's contract(s) with other entities, including, but not limited to State and Federal Agencies, and such services involve the use or disclosure of personally identifiable information, then:

(a) CONTRACTOR shall observe and comply with all applicable terms of COUNTY's contract(s) with other entities, including, but not limited to, those requirements set forth in "Addendum For Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities".

(c) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the "Addendum for Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" in all such subcontracts as obligations of the subcontractor.

2.36 **Napa Health Matters Listing.** If CONTRACTOR is an organization providing health, human, or social services of a type recognized for listing on the "Napa Health Matters" website, CONTRACTOR agrees to maintain a current and accurate listing on www.NapaHealthMatters.org for such services.

2.37 **Licensure Status**.

(a) License in Good Standing. If CONTRACTOR is providing services under this Agreement as a state-licensed professional, CONTRACTOR shall ensure that CONTRACTOR's professional license is in good standing with all applicable licensing boards. CONTRACTOR understands COUNTY may terminate the Agreement if CONTRACTOR fails to maintain a current professional license in good standing**.** For purposes of this Agreement, "license in good standing" means there is no suspension, revocation or probation for any reason (including the failure to pay licensing fees), nor any restriction upon the provisions of the license: including, but not limited to, restrictions placed by a licensing agency upon CONTRACTOR's license pursuant to any consent or settlement agreement or to an administrative decision of the licensing agency.

(b) Expiration of License. In the event that CONTRACTOR's professional license is not renewed on or before its expiration, CONTRACTOR shall neither provide nor be reimbursed for services pursuant to this Agreement commencing the day after license expiration and until CONTRACTOR's professional license is renewed. For purposes of this Agreement, renewal date is the date the licensing board issues a renewed license, and it is irrelevant whether the licensing board subsequently recognizes any lapse in licensure.

2.38 **Code of Ethics**. CONTRACTOR understands that Napa County Health and Human Services (HHSA) has adopted a Code of Ethics. If the Department Director determines that the

HHSA Code of Ethics applies to CONTRACTOR's activities under this Agreement, CONTRACTOR shall read, understand, and abide by the Code of Ethics, and CONTRACTOR shall on an annual basis provide written certification to HHSA that CONTRACTOR has received, read, understands, and will abide by HHSA's Code of Ethics. The Code of Ethics may be found online at **www.countyofnapa.org** or may be obtained from HHSA upon written request.

2.39 **Electronic Billing System**. CONTRACTOR understands that Napa County Health and Human Services (HHSA) operates an electronic billing system program, which seeks reimbursement from the State of California for the delivery of alcohol, drug abuse and mental health services. If CONTRACTOR provides any services related to alcohol, drug abuse or mental health services under the terms of CONTRACTOR's Agreement, CONTRACTOR agrees, upon request of the Director of HHSA or the Director's designee, to implement the COUNTY's sponsored electronic health record system as part of CONTRACTOR's requirement for the delivery of these services.

2.40 **Audit Report Requirements.** If COUNTY has determined that CONTRACTOR is a "subrecipient" (also known as a "pass-through entity") as defined in 2 C.F.R. § 200 et. seq., CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. § 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement. CONTRACTOR shall observe and comply with all applicable Audit Report Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Federal Awards." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-27

TO: Board of Supervisors

FROM: Jennifer Yasumoto, Director of Health and Human Services Agency

REPORT BY: Jennifer Ivancie, Staff Services Analyst I

SUBJECT: California Children's Services Certification with the Department of Health Care Services

RECOMMENDATION

Approve and authorize Certification Statement Agreement No. 240246B with the Department of Health Care Services (DHCS) for California Children's Services (CCS) confirming the County's agreement to comply with all applicable provisions of State and Federal laws governing this program for Fiscal Year 2023-2024. (No Fiscal Impact, Mandatory).

BACKGROUND

The CCS program is mandated by the Welfare and Institutions Code and the California Code of Regulations (Title 22, Section 51013) to act as an "agent of Medi-Cal" for Medi-Cal beneficiaries with CCS medically eligible conditions. CCS is administered by the Children's Medical Services (CMS) branch of DHCS.

CCS provides diagnostic and treatment services, medical case management, and physical and occupational therapy services to children and youth ages 21 and under with CCS-eligible medical conditions. CCS also provides medical therapy services to be delivered at public schools. Currently, approximately 70 percent of CCS-eligible children are Medi-Cal eligible.

This certification is an acknowledgment that Napa County, as the Local Governing Body, will comply with all applicable laws, regulations and policies in regard to the CCS Program. Approval of this certification is mandatory to allow Health and Human Services Agency (HHSA) Public Health (PH) division to draw down funding for reimbursement for program expenses related to mandatory activities in the CCS program.

Certification documents were received from the State in November 2023.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Mandatory
Consequences if not approved:	If this certification is not signed, the County will not be eligible to receive for reimbursement for program expenses related to mandatory activities for the CCS program.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Certification Statement - California Children's Services (CCS)

County/City: Napa County Fiscal Year: 2023-2024

I certify that the CCS Program will comply with all applicable provisions of Health and Safety Code, Division 106, Part 2, Chapter 3, Article 5, (commencing with Section 123800) and Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000-14200), and any applicable rules or regulations promulgated by DHCS pursuant to this article and these Chapters. I further certify that this CCS Program will comply with the Children's Medical Services Plan and Fiscal Guidelines Manual, including but not limited to, Section 9 Federal Financial Participation. I further certify that this CCS Program will comply with all federal laws and regulations governing and regulating recipients of funds granted to states for medical assistance pursuant to Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.) and recipients of funds allotted to states for the Maternal and Child Health Services Block Grant pursuant to Title V of the Social Security Act (42 U.S.C. Section 701 et seq.). I further agree that this CCS Program may be subject to all sanctions or other remedies applicable if this CCS Program violates any of the above laws, regulations and policies with which it has certified it will comply.

Signature of CCS Administrator — Date Signed: 11/15/2023

Signature of Director or Health Officer — Date Signed: 11/15/2023

Signature and Title of Other – Optional — Date Signed

I certify that this plan has been approved by the local governing body.

Signature of Local Governing Body Chairperson — Date

Approved as to form:
Napa County Counsel
Dated: 12/15/2023

/S/ Jo Ann Parker
Jo Ann Parker, Deputy County Counsel

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-75

TO: Board of Supervisors

FROM: Jennifer Yasumoto, Director of Health and Human Services Agency

REPORT BY: Jennifer Ivancie, Staff Services Analyst I

SUBJECT: Agreements for Medi-Cal Administrative Activities for Fiscal Year 2023-2024

RECOMMENDATION

Approve and authorize Agreement No. 240217B with Cope Family Center; Agreement No. 240219B with Puertas Abiertas Community Resource Center; Agreement No. 240220B with Parents Child Advocacy Network; and Agreement No. 240218B with Up Valley Family Centers of Napa Valley for Fiscal Year (FY) 2023-2024 to provide outreach and linkage to the Medi-Cal program and services and facilitate the Medi-Cal application process. (Fiscal Impact: $96,513; Health and Human Services Agency Fund 2000; Public Health Subdivision 20001; Budgeted; Discretionary).

BACKGROUND

Medi-Cal Administrative Activities (MAA), provided for in the Medi-Cal State Plan and implemented through the 1995 Medi-Cal Administrative Claiming (MAC) agreement, are activities that support the overall Medi-Cal system such as connecting potential individuals to eligibility and services, planning related to system capacity, and general administration. The Medi-Cal State Plan identifies the Department of Health Care Services (DHCS) as the single state agency responsible for administering the federal Medicaid program (Medi-Cal in California) and lays out the eligibility criteria for beneficiaries and services that can be provided. Essentially, every activity and service that is to be claimed for Federal Financial Participation (FFP) must be covered in the State Plan. The Local Government Agency (LGA), or the designated entity responsible for administering MAA locally, is Health and Human Services Agency (HHSA). The LGA may subcontract with Community Based Organizations (CBOs) and other local agencies to perform MAA.

CBOs are often the first doors that low-income individuals and families enter for services, information, referrals, and facilitation of applications for public assistance. Services such as these may be reimbursable under the MAA program. The CBO's represented in these agreements are well regarded by the communities they serve and are very accessible to the target populations, making them the perfect vehicle to have a positive, proactive impact in reaching the uninsured. These agreements are funded with MAA reimbursements that

HHSA claims based on MAA claimable activities performed by these CBO's. For HHSA to claim FFP, it must expend up-front Certified Public Expenditures (CPE) to pay for services. HHSA's CPE is funded by county contributions, Tobacco Master Settlement Agreement funds (MSA), and Mental Health Services Act (MHSA) grants. The contract maximums represent the costs of providing the services and enable the CBOs to continue their Medi-Cal outreach and enrollment efforts.

These agreements are being presented to the Board at this time because the timing for identifying available CPE is not ready until the end of the calendar year. The funds used to support the work include MSA, MHSA, and reimbursement received from DHCS for the prior year's MAA expenditure. All agreements are with local vendors.

Requested Actions:

Approve and authorize the Chair to sign the following agreements:

1. Agreement No. 240217B with Cope Family Center, Inc., for a maximum of $32,532;

2. Agreement No. 240219B with Puertas Abiertas Community Resource Center, for a maximum of $24,828;

3. Agreement No. 240220B with Parents Child Advocacy Network for a maximum of $25,009; and

4. Agreement No. 240218B with Up Valley Family Centers of Napa Valley, Inc., for a maximum of $14,144.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Health & Human Services Public Health Division
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	While there is no mandate to contract with these providers, these agreements will allow HHSA to continue to support a community-wide effort for outreach and enroll uninsured and potentially eligible residents in Medi-Cal coverage and link them to needed health and behavioral health services.
Is the general fund affected?	No
Future fiscal impact:	None, these Agreements terminate on June 30, 2024, and are included in the approved Fiscal Year 2023-2024 budget.

Consequences if not approved:	Contractors will be unable to be reimbursed for additional outreach and facilitation of application activities performed in the community and HHSA will be unable to claim the providers' portions from the agreements that provide outreach and facilitation of application activities, which are reimbursable by Medi-Cal Administrative Activities.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY AGREEMENT NO. 240217B
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the 1st of July 2023, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and **COPE FAMILY CENTER**, a California nonprofit corporation, whose mailing address is 707 Randolph Street, Napa, CA 94559, hereinafter referred to as "CONTRACTOR." COUNTY and CONTRACTOR may be referred to below collectively as "Parties" and individually as "Party."

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services in order for CONTRACTOR to provide assistance with outreach, enrollment, retention, and utilization of Medi-Cal for all potentially eligible children/families throughout Napa County; and CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

TERMS

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the Terms and Conditions and their own Exhibits, which together are attached hereto and incorporated by this reference as though set forth in full herein. The Section numbers of any portion of this Agreement may at times be referred to either as "Sections" or "Paragraphs" interchangeably.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto as of the date first above written.

NAPA COUNTY, a political subdivision of the State of California	**CONTRACTOR**
By _____ **JOELLE GALLAGHER, Chair of the Board of Supervisors** ATTEST: NEHA HOSKINS, Clerk of the Board By: _____ DATE APPROVED BY THE BOARD: _____ Processed by: _____ Deputy	Jessica Silverman Digitally signed by Jessica Silverman Date: 2024.01.03 14:30:58 -08'00' JESSICA SILVERMAN, Executive Director

Maximum Amount of this Agreement: $32,532 Term Expires: June 30, 2024 Automatic renewal of term does not apply.	APPROVED AS TO FORM BY NAPA COUNTY COUNSEL By: *Jo Ann Iwasaki Parker, Deputy C.C., by e-signature* Date: December 27 2023

TERMS AND CONDITIONS OF NAPA COUNTY AGREEMENT NO. 240217B

SECTION 1. Contract Administration

For purposes of this Agreement, the following shall apply:

1.1 "Department" shall mean: Health and Human Services Agency

1.2 "Director" shall mean the person elected or appointed to the chief management position of the Department.

1.3 "Contract Administrator" shall be: Contracts Analyst or such other person as designated by the Department Director. The address for COUNTY's Contract Administrator shall be: 2751 Napa Valley Corporate Drive, Building B, 2nd Floor, Napa, CA 94559.

1.4 The Program Manager for COUNTY shall be: Christine Wu, M.D., Public Health Officer, 2751 Napa Valley Corporate Drive, Building B, 2nd Floor, Napa, CA 94559.

1.5 The Contract Contact Person for CONTRACTOR shall be: Jessica Silverman, 707 Randolph Street, Napa, CA 94559

1.6 CONTRACTOR is a [ ] sole proprietor [ ] partnership [X] corporation [ ] public agency [ ] other (specify) .

1.7 The source of funding for this Agreement shall be: Health and Human Services Agency General Fund, Mental Health Services Agreement (MHSA), and Master Services Agreement (MSA).

1.8 In entering into this Agreement, CONTRACTOR acknowledges and agrees to abide by the applicable terms of the following COUNTY-entity agreements, and as they may amended from time to time: Department of Health Care Services – Napa County Agreement No. 230296B

These agreements are on file with the Napa County Clerk of the Board of Supervisors and may be accessed at **https://www.countyofnapa.org/DocumentCenter/** under "Departments/Health and Human Services/Administration/Contracts and Administration Documents" (See also Section 2, Paragraphs 2.15(b)(2) and 2.35)

SECTION 2. General Terms and Conditions.

Attached hereto and incorporated by this reference as Exhibit C is "SECTION 2. General Terms and Conditions – Version 12", which shall be referred to herein as the "General Terms and Conditions" and which shall apply to this Agreement unless otherwise specifically limited or excluded by more specific provisions.

Due to changes in the laws, future versions of General Terms and Conditions shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR, effective within such time period as is designated in Paragraph 2.10 (Other Termination) plus 15 days or as mandated by local, state or federal laws or regulations, whichever date is sooner.

SECTION 3. Specific Terms and Conditions.

The following Specific Terms and Conditions provide additional terms and conditions or modify the General Terms and Conditions of this Agreement. A Specific Term and Condition shall control if a

conflict exists with a General Term and Condition.

3.1 The following Specific Terms and Conditions apply when CONTRACTOR's obligations under this Agreement involve the following as designated by an "X":

[X] (a) Contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (General Terms and Conditions Paragraph 2.8(b) applies).

[ ] (b) Construction or pre-construction related services (General Terms and Conditions Paragraph 2.19(e) applies).

[ ] (c) Work on or the supplying of any software systems or equipment containing or suspected of containing clocks or embedded chips functioning as or dependent upon the use of clocks or calendars (General Terms and Conditions Paragraph 2.29 applies).

[X] (d) Services covered by a Federal Health Care Program (General Terms and Conditions Paragraph 2.31 applies).

[ ] (e) Services covered by a State Medi-Cal Specialty Mental Health Program (General Terms and Conditions Paragraph 2.32 applies).

[ ] (f) Mental Health Activities (General Terms and Conditions Paragraph 2.33 applies).

[X] (g) Services involving the receipt, use or disclosure of protected health information: A determination has been made by COUNTY's Privacy Officer that CONTRACTOR shall not provide services under this Agreement as a Business Associate to COUNTY. General Terms and Conditions Paragraph 2.34(b) does not apply to this Agreement.

[ ] (h) Services provided under COUNTY's Managed Care Provider Program, which shall be subject to all the terms and conditions set forth in the Napa County Mental Health Managed Care Provider Manual, herein incorporated by reference and on file with the Clerk of the Napa County Board of Supervisors.

[ ] (i) Services as a provider for which CONTRACTOR has submitted a "Provider Application," which CONTRACTOR warrants that the information contained in said application is accurate and understands that any inaccuracies may be grounds for termination of this Agreement by COUNTY. CONTRACTOR authorizes COUNTY to consult with third parties, including but not limited, to the National Practitioner Data Bank or other applicable licensing boards.

[ ] (j) Services involving the use or disclosure of personally identifiable information that are performed as a subcontractor under COUNTY's contract with another entity when that contract requires COUNTY to include its applicable terms in COUNTY's subcontracts. (General Terms and Conditions Paragraph 2.35 applies.)

[ ] (k) Services determined by the Department Director to be covered by Department's Code of Ethics. (General Terms and Conditions Paragraph 2.38 applies.) CONTRACTOR understands that, by entering into this Agreement, CONTRACTOR acknowledges that CONTRACTOR has received, read, and understands the Code of Ethics, and agrees to abide by the terms therein as applicable to CONTRACTOR's activities under this Agreement. Department shall provide CONTRACTOR with copies of Department's Code of Ethics prior to the execution of the Agreement. CONTRACTOR further understands that on an annual basis CONTRACTOR shall provide written certification to Department that CONTRACTOR has received, read, understands, and will abide by Department's Code of Ethics.

[X] (l) Services have been determined by the Department Director, or may be determined at a later date, that CONTRACTOR is a subrecipient or pass-through entity and is therefore required to meet all of the requirements found in 2 C.F.R. § 200.331. (General Terms and Conditions 2.40

applies.) COUNTY shall notify CONTRACTOR in accordance with General Terms and Conditions Paragraph 2.13 (Notices), of any change in designation as a subrecipient, and any subsequent increase to the amount of Federal funding CONTRACTOR shall receive under the terms of this Agreement. CONTRACTOR shall be bound thereby upon receipt of notice.

3.2 Source Funding.

(a) Change in Source Funding. Paragraph 1.7 may be unilaterally modified by COUNTY upon written notice to CONTRACTOR who shall be bound thereby immediately upon receipt. The Department Director is delegated the authority to modify Paragraph 1.7 and provide such written notice, but may exercise such authority only after consultation with, and concurrence of, the Napa County Counsel and the Napa County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Napa County Board of Supervisors to modify Paragraph 1.7.

(b) Amendment to Source Funding Agreement. If Paragraph 1.7 identifies a funding source agreement, then any amendment to the funding source agreement shall be automatically incorporated and made a part of this Agreement, effective in accordance with the amended funding source agreement. As a subcontractor of COUNTY, CONTRACTOR shall be bound by the applicable terms of the funding source agreement, and any amendments thereto.

3.3 Statement of Economic Interests. By authorizing its Chair to execute this Agreement on its behalf, COUNTY's Board of Supervisors hereby determines in writing on behalf of COUNTY that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with the disclosure obligations set forth in Paragraph 2.23(b).

3.4 Term of Agreement. Section 2.1 (b) of the General Terms and Conditions does not apply to this Agreement. The term of this Agreement shall commence on the date written on page 1 and shall expire as of **June 30, 2024**, unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Termination for Convenience) or 2.23 (a) (Covenant of No Undisclosed Conflict). The obligations of the Parties under Paragraphs 2.7 (Insurance) and 2.8 (Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes) and 2.21 (Access to Records/Retention).

3.5 COUNTY delegates its authority to the Director of the Health and Human Services Agency to approve future amendments to Exhibits A and B, attached to this Agreement, provided that any such amendment does not materially alter the nature of the services to be provided or increase the maximum compensation available under this Agreement.

SECTION 4. Incorporated Documents.

The following documents are incorporated herein by this reference and attached hereto and labeled as the following Exhibit letters:

Exhibit A: Scope of Work
Exhibit B: Compensation
Exhibit C: "Section 2, General Terms and Conditions, Version 12"
Exhibit D(F): Department of Health Care Services "Special Terms and Conditions"
Exhibit E: Contractor's Privacy and Security Commitments

EXHIBIT A
SCOPE OF WORK
(July 1, 2023 through June 30, 2024)

MEDI-CAL ADMINISTRATIVE ACTIVITIES

Medi-Cal Administrative Activities (MAA) are activities performed that are necessary for the proper and efficient administration of the Medi-Cal State Plan. The Local Government Agency (LGA), or the designated entity responsible for administering MAA locally, is Napa County's Health and Human Services Agency (HHSA). The LGA may subcontract with community-based organizations (CBOs) to perform MAA.

In FY 13-14, HHSA launched a community-wide effort to outreach and enroll uninsured and potentially eligible residents in Medi-Cal coverage and to link them to needed health/behavioral health services. The essential component of this effort is subcontracting with qualified and interested CBOs to link Medi-Cal eligible and potentially eligible individuals with Medi-Cal covered services as well assist in the Medi-Cal application process. Currently, many CBOs are the first-place low-income individuals and families go for services including: Medi-Cal and Medi-Cal covered service information, referral, and facilitation of the Medi-Cal application. Napa County recognizes the unique relationship that CBOs have with the Medi-Cal eligible population and wishes to maximize this relationship in assuring the availability and accessibility of Medi-Cal services.

Eligibility for Medi-Cal was expanded under the Affordable Care Act and more residents are eligible for Medi-Cal. This project intends to have a positive, proactive impact in reaching the uninsured by leveraging the effectiveness that CBOs have in linking people to the appropriate services within the county. The project also intends to ensure there is a greater chance that anyone who needs health/behavioral health care successfully connects and engages in those services.

As a participant in this project, CONTRACTOR is expected to carry out the duties specified below to ensure to the greatest extent practicable that: Uninsured Napa residents who are eligible for Medi-Cal coverage receive it and access the care they need.

Type of MAA Activities to be performed:

1. **Allowable Medi-Cal Outreach**

   This activity may consist of discrete campaigns or may be an ongoing activity. This activity is directed to groups or individuals targeted to two goals:

   - Bringing potentially eligible people into the Medi-Cal system for the purpose of determining Medi-Cal eligibility; and
   - Bringing Medi-Cal eligible people into Medi-Cal services. Outreach may consist of discrete campaigns or may be an ongoing activity, such as: sending teams of employees into the community to contact homeless alcoholics or drug abusers; establishing a telephone or walk-in service for referring persons to Medi-Cal services or eligibility offices; operating a drop-in community center for underserved populations, such as minority teenagers where Medi-Cal eligibility and service information is disseminated.

The following activities describe how outreach shall be performed:

a. Outreach campaigns directed to the entire population to encourage potential Medi-Cal eligibles to apply for Medi-Cal. These campaigns are Medi-Cal only eligibility outreach campaigns.

b. Outreach campaigns directed toward bringing Medi-Cal eligibles into Medi-Cal covered services. In such campaigns, the language should clearly indicate that the message is directed to only persons eligible for Medi-Cal, and not the general public. These campaigns are service campaigns, targeted to specific Medi-Cal services, such as Early and Periodic Screening, Diagnosis and Treatment (EPSDT).

c. Informing children and their families on how to effectively access, use and maintain participation in all health resources under the Medi-Cal program.

d. Informing individuals or the general public about the benefits and services that the Medi-Cal program offers and encouraging and referring them to apply for Medi-Cal benefits.

e. Providing initial referral assistance to families and individuals to Medi-Cal services.

Note: A health education program or campaign may be allowable as a Medi-Cal administrative cost if it is targeted specifically to Medi-Cal services and for Medi-Cal eligible individuals, such as an educational campaign on immunization addressed to parents of Medi-Cal children.

2. Performance Targets

CONTRACTOR will participate in at least twenty (20) outreach events.

CONTRACTOR will outreach to at least one thousand (1,000) individuals, providing information about Medi-Cal coverage and Medi-Cal covered services.

CONTRACTOR will refer and successfully link at least two thousand one hundred (2,100) individuals to Medi-Cal coverage and/or Medi-Cal covered services.

3. Quarterly Reporting

CONTRACTOR shall provide quarterly reports as indicated in the schedule included in Exhibit B, "COMPENSATION". Reports will include documentation to support the number and type of outreach events (e.g., flyers, brochures, dates, and announcements of events) and the number of individuals and/or families reached through ongoing outreach efforts. The reports will also include documentation to support the number of individuals and/or families linked to Medi-Cal services (e.g., client count). Finally, the reports will include certification that costs incurred were directly related to the provision of MAA allowable activities.

4. Compliance with MAA Requirements

CONTRACTOR shall comply with MAA requirements such as completing mandated covered contractor provisions and providing documentation that the organization is meeting

requirements of the MAA claiming plan for which they are included such as submitting to HHSA the job descriptions for the staff performing MAA activities.

CONTRACTOR understands that the MAA activities and expenditures performed by CONTRACTOR are subject to the requirements set forth in the Department of Health Care Services (DHCS) County-Based MAA Program Operational Plan (approved July 1, 2017), which is incorporated herein by reference and can be found at the following link: https://www.dhcs.ca.gov/provgovpart/Documents/ACLSS/CMAA/CMAA-TCM_Imp_Plan/CMAA-TCM-Operational_Plan-2018.pdf

CONTRACTOR shall comply with DHCS MAA Operational Plan requirements.

CONTRACTOR understands that the information presented to COUNTY by CONTRACTOR under this Agreement shall be used for filing a claim with the Federal Government for federal funds, and that any knowing misrepresentation constitutes a violation of the Federal False Claims Act.

EXHIBIT B
COMPENSATION
(July 1, 2023 through June 30, 2024)

MEDI-CAL ADMINISTRATIVE ACTIVITIES

COUNTY shall reimburse CONTRACTOR for Medi-Cal Administrative Activities (MAA) described in Exhibit A as follows:

1. **Amount**

   CONTRACTOR shall be reimbursed up to a maximum of $32,532 for Medi-Cal Outreach as described in Exhibit A for the term of the Agreement. Funding to the CONTRACTOR shall be contingent upon availability of funds for source of certified public expenditure. With the written approval of the Director of COUNTY's Health and Human Services Agency or designee, CONTRACTOR may modify the maximum amount of individual budget items in its final approved budget. The dollar amount of any individual budget item may be reduced without limitation, provided the total dollar amount for all budget items shall remain unchanged, such changes in the budget shall not add a new type of service to the program description, and the administrative cost line item shall remain unchanged. Such changes shall not be effective unless and until notice of consent by Health and Human Services Agency has been given to CONTRACTOR in writing.

   CONTRACTOR shall be able to verify that expenditures related to its provision of MAA activities represent accurately identifiable and eligible costs, and that CONTRACTOR has excluded any non-claimable non-salary costs in compliance with the Department of Health Care Services (DHCS) County-Based MAA Program Operational Plan (approved July 1, 2017), which is incorporated herein by reference and can be found at the following link: https://www.dhcs.ca.gov/provgovpart/Documents/ACLSS/CMAA/CMAA-TCM_Imp_Plan/CMAA-TCM-Operational_Plan-2018.pdf

2. **Certified Public Expenditure**

   This Agreement is funded by County General funds, Tobacco Master Settlement (MSA) Agreement funds that CONTRACTOR was awarded under Napa County Grant Agreement No. 230059B, 230077B, and 240041B and Mental Health Services Act (MHSA) funds that CONTRACTOR was awarded under Napa County Grant Agreement No. 210355B. CONTRACTOR may not use the funds received under the aforementioned Agreements to claim reimbursement for any other Federal program.

ACTIVITY	Contract #230059B	Contract #230077B	Contract #240041B	Contract #210355B	This Agreement (#240217B)
Medi-Cal Outreach	$49,968	$35,808	$7,772	$36,355	$32,532
TOTAL					**$32,532**

3. Method of Payment

CONTRACTOR must submit an invoice or claim form to the County Fiscal Analyst, not to exceed the contract maximum. Actual annual reimbursement shall be based on CONTRACTOR's actual cost, not to exceed the annual maximum operating budget amount in each Fiscal Year. The quarterly reports and invoices due, as noted below, shall identify the activities conducted and expenditures made during the previous quarter ending on the last date of the calendar month prior to the report due date. Payment will be made following receipt of the report and invoice. COUNTY shall not release payments until CONTRACTOR has submitted reports for the previous quarter.

CONTRACT PERIOD	REPORT/INVOICE DUE DATE
July 1, 2023– September 30, 2023	Upon Contract Execution
October 1, 2023 – December 31, 2023	January 31, 2024
January 1, 2024– March 31, 2024	April 30, 2024
April 1, 2024 – June 30, 2024	July 15, 2024

CONTRACTOR shall, on each quarterly invoice, certify that the expenditures incurred represent accurate identifiable and eligible costs, and that CONTRACTOR's expenditures were made on eligible MAA claimable activities, as set forth in Exhibit A of this Agreement. CONTRACTOR shall provide certification in a manner, and on an invoice, provided by COUNTY.

4. Contract Monitoring

COUNTY will meet with CONTRACTOR during the initial months/quarters of this agreement to review documentation that supports MAA invoicing and to provide technical assistance as needed. CONTRACTOR shall meet at least once a year with COUNTY thereafter to coordinate and review fulfillments of contract terms and address any potential impediments to the fulfillment of the terms of this agreement. Such review shall extend to an examination of type and quantity of services provided, interagency coordination, and any other issues pertinent to this agreement.

- CONTRACTOR is responsible for maintaining all documentation required for monitoring.
- CONTRACTOR shall request technical assistance from the COUNTY regarding elements of the contract with which they need assistance. COUNTY shall consider any such request and shall provide technical assistance to the CONTRACTOR if the COUNTY has the capacity and capability to do so. CONTRACTOR maintains responsibility for ensuring that its services and activities are in compliance with applicable regulations.
- COUNTY normally shall provide thirty (30) day notice of the site visit to the CONTRACTOR and shall specify the documentation that will need to be available at the time of the visit.
- Under normal circumstances, the visit may require the review of the following documents: records that delineate the MAA activities from other activities, support full expenditure of funding and that expenditures were directly related to MAA activities,

demonstrate covered contractor screening provisions have been met, and any other documentation the COUNTY may request to be reviewed to ensure CONTRACTOR meeting state and federal requirements delegated through the contract.

- COUNTY shall provide CONTRACTOR with the opportunity to respond to the COUNTY'S written report of the site visit prior to the report becoming final.
- If the final report identifies material variations between the CONTRACTOR'S activities and the requirements of the contract, the COUNTY may require the CONTRACTOR to prepare a written plan of action to address those variations.

5. Program Name and Number for Federal Claiming

Title 31- Money and Finance, Subtitle V – General Assistance Administration, Chapter 75 - Requirements for Single Audits, Section 7502 requires each pass-through entity provide the sub recipient program names and any identifying numbers from which such assistance is derived. The Catalog of Federal Domestic Assistance (CFDA) number for this federal program is 93.778, Medical Assistance Program.

6. Disallowed Costs

COUNTY shall withhold any payments for services for which documentation of activities and expenditures is not sufficient to claim the Federal Financial share of MAA.

CONTRACTOR shall reimburse COUNTY for all overpayments identified by CONTRACTOR, COUNTY and/or State or Federal oversight agencies as an audit exception. CONTRACTOR shall make any repayment based on audit exception(s) upon discovery of said exception(s). If reimbursement is required, CONTRACTOR shall reimburse COUNTY within sixty (60) days of identification.

EXHIBIT C

SECTION 2. GENERAL TERMS AND CONDITIONS --VERSION 12

2.1 **Term of the Agreement.**

(a) Term. The term of this Agreement shall commence on the date first written on page 1 and shall expire on the expiration date set forth on page 1 unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Other Termination) or 2.23(a) (Covenant of No Undisclosed Conflict).

(b) Automatic Renewal. The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the same terms and conditions, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30. COUNTY authorizes the Department Director to determine whether this Agreement shall not be renewed and to provide the written notice of the intention to not renew on behalf of COUNTY.

(c) Obligations Extending Beyond Term. The obligations of the parties under Paragraphs 2.7 (Insurance) and 2.8 (Hold Harmless/Defense/Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes), 2.21 (Access to Records/Retention), 2.31 (Compliance with Federal Health Care Program Requirements, 2.32 (Compliance with State Medi-Cal Specialty Mental Health Services Requirements), and 2.33 (Compliance with Mental Health Activities Requirements). To the extent the paragraphs referenced in this Paragraph 2.1 may be modified by Specific Terms and Conditions contained in SECTION 3 of this Agreement, the modifications shall also continue after the expiration date or early termination.

2.2 **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A."

2.3 **Compensation.**

(a) Compensation/Maximum. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates and/or in the amount(s) set forth in Exhibit "B". The maximum payment for the initial term of this Agreement, and the successive maximum payments for each subsequent automatically renewed term, shall each be that maximum amount set forth on page 1; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

(b) Advance Funding.

1. Use of Funds. To the extent this Agreement may permit advance funding of services and expenses, use of funds delineated in this Agreement is limited to the term of performance unless otherwise modified in accordance with Paragraph 2.17 (Amendment/Modification). COUNTY may at its discretion recapture funds obligated under the authority of this Agreement if expenditure plans are not being met.

2. Reversion of Funds. If funds awarded to CONTRACTOR have not been expended in accordance with this Agreement and COUNTY has determined after consultation with CONTRACTOR that funds will not be spent in a timely manner, such funds will revert to COUNTY

for that reason and to the extent permitted by and in a manner consistent with federal and state law, regulations, and policies.

(c) Availability of Funds. It is mutually understood that, for the benefit of both parties, this Agreement may have been written before ascertaining the availability of congressional and/or state legislative appropriation of funds in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. If funding of this Agreement is dependent upon the availability of congressional and legislative appropriation of funds, then:

1. This Agreement shall be deemed automatically terminated if the Congress and and/or the State Legislature do not appropriate funds needed for this Agreement;

2. At COUNTY's discretion, this Agreement may be deemed automatically terminated or this Agreement may be modified or amended in accordance with Paragraph 2.17 (Amendment/Modifications), if the Congress and/or State Legislature do not appropriate sufficient funds needed for this Agreement; and

3. This Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or State Legislature, or any statute enacted by the Congress or State Legislature, that may in any manner affect the provisions, terms, or funding of this Agreement.

(d) COUNTY may withhold any compensation due CONTRACTOR as an offset for any revenues lost arising from an act or omission in billing or documentation practices by CONTRACTOR. CONTRACTOR shall make COUNTY whole for any such lost revenues.

2.4 **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Where expense reimbursement is sought, the invoice shall describe the nature and cost of the expense, the task(s) if any to which the expense was related, and the date incurred. CONTRACTOR shall submit invoices not more often than monthly to the Contract Administrator. After review and approval as to form and content, the invoice shall be submitted to the Napa County Auditor no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Contract Administrator upon request during the term of this Agreement in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

2.5 **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the

compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

2.6 **Specific Performance.** It is agreed that CONTRACTOR, including the agents, employees and authorized subcontractors of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

2.7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 2.7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager,

which shall be filed by CONTRACTOR with the Health and Human Services Agency prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 2.7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 2.7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall <u>not</u> use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) <u>Deductibles/Retentions</u>. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) <u>Inclusion in Subcontracts</u>. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 2.7.

(f) 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, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2.8 **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees or volunteers or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Obligations Relating to Criminal Background Checks.

1. If CONTRACTOR's obligations under this Agreement involve contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (hereafter in this paragraph referred to as "third persons"), then CONTRACTOR shall investigate by all lawful means, including but not limited to obtaining information from official government sources as the result of taking fingerprints, the criminal background of each and all of its officers, agents, employees, interns, and volunteers, however denominated (hereafter, "employees"), who will have direct personal contact with, or provide direct personal services to, third persons in the performance of this contract. Depending upon the information acquired by its investigation, CONTRACTOR shall not allow any of its employees to have personal contact with, or provide direct personal services to, third persons where it may reasonably be concluded as a result of its investigation that an employee should not have such contact or provide such service. Nothing herein requires CONTRACTOR to investigate the criminal background of an employee who is currently licensed by the State of California and whose license requires a criminal background investigation.

2. Notwithstanding anything to the contrary in (a) or (c), CONTRACTOR shall defend and indemnify COUNTY and its officers, agents and employees from any and all claims, actions, settlements or judgments of whatever kind which may arise from the failure of CONTRACTOR to conduct the criminal background investigation described in this subparagraph (b) or from the failure of CONTRACTOR after the investigation to reasonably disallow an employee from having such personal contact or providing such direct personal service.

(c) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

2.9 **Termination for Cause.**

(a) If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days written notice to the defaulting party in the manner set forth in Paragraph 2.13 (Notices).

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

2.10 **Other Termination.**

(a) This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty
(30)
days prior to the effective date; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination.

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

2.11. **Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement, if and to the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(b) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof.

(c) Notwithstanding the provisions set forth in subparagraph (b) above, if the services involve development or improvement of previously patented inventions or previously copyrighted software, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(d) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

2.12 **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

2.13 **Notices**.

(a) In General. Except as set forth in subparagraph (b) below with respect to notice of automatically adopted provisions, all notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this subparagraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier. Any mailed notice, demand, request, consent, approval or communication that COUNTY desires to give to CONTRACTOR shall be addressed to CONTRACTOR's Contract Contact Person at the mailing address set forth in SECTION 1 of this Agreement. Any mailed notice, demand, request, consent, approval or communication that CONTRACTOR desires to give to COUNTY shall be addressed to COUNTY's Contract Administrator at the mailing address set forth in SECTION 1 of this Agreement. Either party may change its address by notifying the other party of the change of address.

(b) Provisions Adopted Automatically. COUNTY reserves the right to provide notice to CONTRACTOR via facsimile of terms, which automatically become part of this Agreement upon approval by the Napa County Board of Supervisors. Notice delivered by facsimile shall be deemed to have been received on the date a successful delivery confirmation report is generated.

(c) Waiver of Notice by CONTRACTOR. If receipt of notice is refused by CONTRACTOR or if notice is undeliverable due to CONTRACTOR's failure to provide a change of address, notice shall be deemed waived and COUNTY may proceed as though notice were accomplished.

2.14 **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. Future versions of the following policies shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR pursuant to Paragraph 2.13. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment."

(c) Drug and Alcohol Policy.

(d) Napa County Information Technology Use and Security Policy. To this end, all

employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

2.15 **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to or created by CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive or create, if any, in trust and confidence, except with the prior written approval of COUNTY, as expressed through the Department Director. Upon cancellation or expiration of this Agreement, to the extent permitted by law, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR agrees to adhere to the applicable terms regarding the privacy and security of Protected Information as set forth in the COUNTY-entity agreements identified in Paragraph 1.8 of Section 1 of this Agreement (Contract Administration). CONTRACTOR shall also observe and comply with those requirements set forth in "Addendum For Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(3) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 2.15.

(4) CONTRACTOR agrees to notify COUNTY, by and through the Napa County Privacy Officer at 2751 Napa Valley Corporate Dr. Suite B, Napa, CA 94559, or 707.253-4715, immediately in the following instances:

(A) Upon the discovery of a breach of PHI/PII/other Protected Information in electronic or other media;

(B) Upon the discovery that PHI/PII/other Protected Information was, or is reasonably believed to have been accessed or acquired by an unauthorized person;

(C) Upon the discovery of a suspected security incident that involves PHI/PII/other Protected Information; or

(D) Upon the discovery of any breach, security incident, intrusion, or unauthorized access, use, or disclosure of PHI/PII/other Protected Information.

(5) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of PHI/PII/other Protected Information, or its unauthorized access to or disclosure of PHI/PII/or other Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) To the extent CONTRACTOR creates, is provided, or has access to applications and records concerning any individual made or kept by COUNTY in connection with public social services (records) as defined in California Welfare & Institutions Code Section 10850, CONTRACTOR shall maintain the confidentiality of such records in accordance with Section 10850, except as otherwise permitted by COUNTY and as necessary for purposes of providing services under this Agreement.

(d) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

(e) HHSA Contractor Security Requirements. Whenever CONTRACTOR utilizes their own equipment to perform work under this Agreement , CONTRACTOR warrants that they have reviewed "HHSA Contractor Security Requirements" and can adhere to the minimum standards at all time. A copy of "HHSA Contractor Security Requirements" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

2.16 **No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Department Director.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability

company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

2.17 **Amendment/Modification.**

(a) Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only COUNTY, by the Department Director (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed $10,000), or by COUNTY's Purchasing Agent (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed the maximum aggregate amount for Purchasing Agent contracts as specified by Napa County Code section 2.36.040 (G)) or by COUNTY's Board of Supervisors (in all other instances), in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by "Exhibit A." Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

(b) Notwithstanding anything to the contrary in (a), this Agreement may be unilaterally modified by COUNTY upon written notice to CONTRACTOR under the following circumstances:

1. There is a decrease in state or federal funding needed for this Agreement;
2. There is a no-cost extension of the end date of the Agreement as authorized by a state or federal funding source; or
3. There is a change in state/federal law or regulation requiring a change in a provision of this Agreement.

(c) The Department Director is delegated the authority to modify this Agreement in accordance with subparagraph (b), but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to modify this Agreement under subparagraph (b).

2.18 **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

2.19 **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. **CONTRACTOR acknowledges its independent duty to be and to remain informed of all changes in such laws without reliance on**

COUNTY to provide notice of such changes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS, use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Federal Grant Source. Notwithstanding anything to the contrary in this Agreement, if the funds for this Agreement are derived from a grant from a federal agency, pursuant to 29 CFR 97.36(i)(8) and (9), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the federal granting agency with respect to any discovery or invention which arises or is developed pursuant to this Agreement, and pertaining to any copyrights or rights in data created or otherwise developed when engaging in activities of CONTRACTOR under this Agreement. The requirements and regulations imposed by the federal granting agency are set forth in the original grant agreement specified in Section 1 of the Agreement and are incorporated by reference herein. The original grant agreement is on file with the Clerk of the Board of Supervisors.

(d) Prevailing Wages. If the services to be provided relate to construction or pre-construction-related services, including but not limited to testing, surveying, and inspection, then this Agreement includes the following provisions:

(1) Affected work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying

and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing wages rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or his designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is $30,000 or more.

(e) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 2.19 in all such subcontracts as obligations of the subcontractor.

(f) Notwithstanding any other provisions of this contract, CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement.

2.20 **Taxes.** CONTRACTOR agrees to file all applicable federal and state tax returns or applicable withholding documents and to pay all applicable taxes or to make all required withholdings on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

2.21 **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall

maintain all required records, including clinical documentation, for at least ten (10) years after COUNTY makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

2.22 **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement. The parties further warrant that the signatories to this Agreement are authorized to execute this Agreement on behalf of their respective parties and that any action necessary to bind each such party has been taken by that party prior to entering into this Agreement.

2.23 **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement. The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors terminate this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless COUNTY, through a person authorized to execute this Agreement on behalf of COUNTY, or the Department Director, has determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

2.24 **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the general public.

2.25 **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

2.26 **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

2.27 **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

2.28 **Entirety of Contract.** This Agreement, including documents incorporated by reference and not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

2.29. **Other Terms and Conditions [Reserved.]**

2.30 **Acknowledgment of Funds; Compliance with Government Code Section 7550.**

(a) **In General.** Because the monies provided by COUNTY are funded by taxpayer dollars, it is important that the public know the individuals and organizations that are receiving funds from COUNTY under this Agreement. Therefore, CONTRACTOR shall acknowledge funding received under this Agreement in statements or printed materials relating thereto. All printed materials shall contain the following information in a type size and style appropriate to the materials: "Made possible by funding provided by the County of Napa."

(b) **Compliance With Government Code Section 7550**. In addition, if the Scope of Work includes preparation of a document or written report and the total cost of the work is more than $5,000, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report as required by Government Code section 7550. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

2.31 **Compliance with Federal Health Care Program Requirements.** If CONTRACTOR will be performing services under this Agreement that are covered by a Federal Health Care Program, then:

(a) CONTRACTOR shall observe and comply with all applicable Federal Health Care Program Requirements, including but not limited to those requirements set forth in "Addendum For Contracts Involving Federal Health Care Programs—Revision of March 22, 2021." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and is online at:
www.countyofnapa.org.

(b) CONTRACTOR shall attend and/or provide Compliance Trainings as required by the Department Director unless otherwise deemed exempt by the Department Director or designee thereof.

(c) CONTRACTOR shall make COUNTY whole for any revenues lost arising from an act or omission in billing practices by CONTRACTOR.

(d) CONTRACTOR warrants that no one providing services is an Excluded Individual as such term is defined for Federal Health Care Programs.

(e) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contractors Involving Federal Health Care Programs". Said penalties and fines that may be assessed are as follows: civil monetary penalties of $11,000 per item or service; treble damages for the submission of claims for reimbursement from an excluded health care provider.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the Addenda in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR agrees to abide by COUNTY'S policies entitled "Whistleblower Protections", "The False Claims Act (Federal & State Statutes) & Other Administrative Remedies & Statutes", **"**Federal Anti-Kickback Prohibitions" and "Physicians Referrals – The Stark Law". The policies are on file with the Clerk of the Napa County Board of Supervisors and the Department and are also online at: www.countyofnapa.org.

(i) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.32 **Compliance with State Medi-Cal Specialty Mental Health Services Requirements.** If CONTRACTOR, under this Agreement, is required to and performs services that are covered by a State Medi-Cal Specialty Mental Health Services Program, then:

(a) CONTRACTOR shall observe and comply with all applicable State Medi-Cal Specialty Mental Health Services Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Medi-Cal Specialty Mental Health Services--Revision No. 1" for services performed on or after July 1, 2014. The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator, or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(c) CONTRACTOR is subject to any audits of its services or claims conducted by the Department, the California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(d) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, disallowances for payment or lost revenues identified and discovered by COUNTY that are attributable to CONTRACTOR's actions when performing its obligations under this Agreement, such as insufficient documentation by CONTRACTOR of Medical Necessity or billing errors by CONTRACTOR that preclude COUNTY from claiming the Federal Financial Participation share of Medi-Cal or State General Funds.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the applicable Addendum in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.33 **Compliance with Mental Health Activities Requirements.** If CONTRACTOR, under this Agreement, is required to perform mental health activities, then:

(a) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(b) CONTRACTOR shall be subject to any audits of its services or claims conducted by Department, California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(c) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, lost revenues as identified and discovered by the COUNTY that are attributable to CONTRACTOR's performance under this Agreement such as CONTRACTOR's insufficient documentation of services as required by the Agreement.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any

payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable requirements.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party; CONTRACTOR shall include the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.34 **Compliance with Federal Health Insurance Portability and Accountability Act of 1996.** If CONTRACTOR shall perform services under this Agreement involving the receipt, use, or disclosure of protected health information, then:

(a) Federal and other applicable law. CONTRACTOR shall observe and comply with all applicable requirements of the Federal Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder by the U.S. Department of Health and Human Services (collectively referred to as "HIPAA"), and other applicable laws.

(b) HIPAA Business Associate Agreement. If applicable, CONTRACTOR shall comply with the terms and conditions of the HIPAA Business Associate Agreement previously entered into with COUNTY, which is incorporated by reference herein and on file with the Clerk of the Board of Supervisors.

(c) Use or Disclosure of Protected Health Information. CONTRACTOR may use or disclose protected health information for the purpose of performing functions, activities for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate HIPAA, if done by COUNTY, or the provisions of any applicable HIPAA Business Associate Agreement.

(d) Subcontractors. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall require compliance with all applicable HIPAA provisions, other applicable law, and any applicable HIPAA Business Associate Agreement(s) in such subcontracts as obligations of the subcontractor.

2.35 **Compliance With COUNTY's Obligations Under Contracts With Other Entities.** If CONTRACTOR under this Agreement shall perform services as a subcontractor under COUNTY's contract(s) with other entities, including, but not limited to State and Federal Agencies, and such services involve the use or disclosure of personally identifiable information, then:

(a) CONTRACTOR shall observe and comply with all applicable terms of COUNTY's contract(s) with other entities, including, but not limited to, those requirements set forth in "Addendum For Contracts Involving Personally Identifiable Information Subject to Confidentiality

or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities".

(c) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the "Addendum for Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" in all such subcontracts as obligations of the subcontractor.

2.36 **Napa Health Matters Listing.** If CONTRACTOR is an organization providing health, human, or social services of a type recognized for listing on the "Napa Health Matters" website, CONTRACTOR agrees to maintain a current and accurate listing on www.NapaHealthMatters.org for such services.

2.37 **Licensure Status**.

(a) License in Good Standing. If CONTRACTOR is providing services under this Agreement as a state-licensed professional, CONTRACTOR shall ensure that CONTRACTOR's professional license is in good standing with all applicable licensing boards. CONTRACTOR understands COUNTY may terminate the Agreement if CONTRACTOR fails to maintain a current professional license in good standing**.** For purposes of this Agreement, "license in good standing" means there is no suspension, revocation or probation for any reason (including the failure to pay licensing fees), nor any restriction upon the provisions of the license: including, but not limited to, restrictions placed by a licensing agency upon CONTRACTOR's license pursuant to any consent or settlement agreement or to an administrative decision of the licensing agency.

(b) Expiration of License. In the event that CONTRACTOR's professional license is not renewed on or before its expiration, CONTRACTOR shall neither provide nor be reimbursed for services pursuant to this Agreement commencing the day after license expiration and until CONTRACTOR's professional license is renewed. For purposes of this Agreement, renewal date is the date the licensing board issues a renewed license, and it is irrelevant whether the licensing board subsequently recognizes any lapse in licensure.

2.38 **Code of Ethics**. CONTRACTOR understands that Napa County Health and Human Services (HHSA) has adopted a Code of Ethics. If the Department Director determines that the HHSA Code of Ethics applies to CONTRACTOR's activities under this Agreement, CONTRACTOR shall read, understand, and abide by the Code of Ethics, and CONTRACTOR shall on an annual basis provide written certification to HHSA that CONTRACTOR has received, read, understands, and will abide by HHSA's Code of Ethics. The Code of Ethics may be found online at **www.countyofnapa.org** or may be obtained from HHSA upon written request.

2.39 **Electronic Billing System**. CONTRACTOR understands that Napa County Health and Human Services (HHSA) operates an electronic billing system program, which seeks reimbursement from the State of California for the delivery of alcohol, drug abuse and mental health services. If CONTRACTOR provides any services related to alcohol, drug abuse or mental health services under the terms of CONTRACTOR's Agreement, CONTRACTOR agrees, upon request of the Director of HHSA or the Director's designee, to implement the COUNTY's sponsored electronic health record system as part of CONTRACTOR's requirement for the delivery of these services.

2.40 **Audit Report Requirements.** If COUNTY has determined that CONTRACTOR is a "subrecipient" (also known as a "pass-through entity") as defined in 2 C.F.R. § 200 et. seq., CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. § 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement. CONTRACTOR shall observe and comply with all applicable Audit Report Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Federal Awards." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

EXHIBIT D(F)
DEPARTMENT OF HEALTH CARE SERVICES "SPECIAL TERMS AND CONDITIONS"

(For federally funded service contracts or agreements and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Health Care Services", "California Department of Health Services", 'Department of Health Care Services", "Department of Health Services", "CDHCS", "DHCS", "CDHS", and "DHS" shall all have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount; agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

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1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the Department of Health Care Services)

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.

c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,‘ and as supplemented by regulation at 41 CFR part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,‘ and as supplemented by regulation at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,‘ and as supplemented by regulation at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from DHCS under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Human Resources (CalHR), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the CalHR rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to CalHR rates may be approved by DHCS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from DHCS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to agreements in which equipment/property, commodities and/or supplies are furnished by DHCS or expenses for said items are reimbursed by DHCS with state or federal funds provided under the Agreement.)

a. **Equipment/Property definitions**

Wherever the term equipment and/or property is used, the following definitions shall apply:

(1) **Major equipment/property**: A tangible or intangible item having a base unit cost of **$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

(2) **Minor equipment/property**: A tangible item having a base unit cost of **less than $5,000** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement.

b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment/property and services related to such purchases for performance under this Agreement.

(1) Equipment/property purchases shall not exceed $50,000 annually.

To secure equipment/property above the annual maximum limit of $50,000, the Contractor shall make arrangements through the appropriate DHCS Program Contract Manager, to have all remaining equipment/property purchased through DHCS' Purchasing Unit. The cost of equipment/property purchased by or through DHCS shall be deducted from the funds available in this Agreement. Contractor shall submit to the DHCS Program Contract Manager a list of equipment/property specifications for those items that the State must procure. DHCS may pay the vendor directly for such arranged equipment/property purchases and title to the equipment/property will remain with DHCS. The equipment/property will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the DHCS Program Contract Manager, in writing, of an alternate delivery address.

(2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.

(3) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:

(a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.

(b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.

(c) Procurements shall be conducted in a manner that provides for all of the following:

[1] Avoid purchasing unnecessary or duplicate items.

[2] Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.

[3] Take positive steps to utilize small and veteran owned businesses.

d. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of $5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.

e. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.

f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.

g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.

h. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase

authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment/Property Ownership / Inventory / Disposition

(Applicable to agreements in which equipment/property is furnished by DHCS and/or when said items are purchased or reimbursed by DHCS with state or federal funds provided under the Agreement.)

a. Wherever the term equipment and/or property is used in Provision 4, the definitions in Paragraph a of Provision 3 shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement shall be considered state equipment and the property of DHCS.

(1) **Reporting of Equipment/Property Receipt -** DHCS requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by DHCS or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the DHCS Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by DHCS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with DHCS Funds) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager.

(2) **Annual Equipment/Property Inventory -** If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the DHCS Program Contract Manager using a form or format designated by DHCS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of DHCS-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager. Contractor shall:

(a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).

(b) Submit the inventory report to DHCS according to the instructions appearing on the inventory form or issued by the DHCS Program Contract Manager.

(c) Contact the DHCS Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by either the DHCS Program Contract Manager or DHCS' Asset Management Unit.

b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.

c. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.

d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.

(1) In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the DHCS Program Contract Manager.

e. Unless otherwise stipulated by the Program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall only be used for performance of this Agreement or another DHCS agreement.

f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the DHCS Program Contract Manager and shall, at that time, query DHCS as to the requirements, including the manner and method, of returning state equipment and/or property to DHCS. Final disposition of equipment and/or property shall be at DHCS expense and according to DHCS instructions. Equipment and/or property disposition instructions shall be issued by DHCS immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, DHCS may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different DHCS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under this Agreement.)

(1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to DHCS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to DHCS.

(2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.

(3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.

(4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

(a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of $1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, to the Contractor and/or Subcontractor.

(b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the DHCS Program Contract Manager. The certificate of insurance shall identify the DHCS contract or agreement number for which the insurance applies.

(c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to DHCS.

(d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance

evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.

(e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

[1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Care Services).

[2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.

[3] The insurance carrier shall notify the California Department of Health Care Services (DHCS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.

(f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by DHCS, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.

(g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, DHCS may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing $5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding $5,000, the Contractor shall obtain at least three bids or justify a sole source award.

(1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.

(2) DHCS may identify the information needed to fulfill this requirement.

(3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:

(a) A local governmental entity or the federal government,

(b) A State college or State university from any State,

(c) A Joint Powers Authority,

(d) An auxiliary organization of a California State University or a California community college,

(e) A foundation organized to support the Board of Governors of the California Community Colleges,

(f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,

(g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations,

(h) Entities and/or service types identified as exempt from advertising and competitive bidding in State Contracting Manual Chapter 5 Section 5.80 Subsection B.2. View this publication at the following Internet address: https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting

b. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

(1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.

c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of $5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.

d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.

e. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.

f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.

g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.

h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(*Subcontractor Name*) agrees to maintain and preserve, until three years after termination of (*Agreement Number*) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

i. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.

j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to DHCS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHCS under this Agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of $10,000.)

a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.

b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.

c. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896.77)

d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.

   (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

   (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

e. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

f. The Contractor shall, if applicable, comply with the Single Audit Act and the audit requirements set forth in 2 C.F.R. § 200.501 (2014).

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both

parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.

c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

d. DHCS has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Termination

a. **For Cause**

The State may terminate this Agreement, in whole or in part, and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand. If this Agreement is terminated, in whole or in part, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials, related to the terminated portion of the Contract, including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The State shall pay contract price for completed deliverables delivered and accepted and items the State requires the Contractor to transfer as described in this paragraph above.

b. **For Convenience**

The State retains the option to terminate this Agreement, in whole or in part, without cause, at the State's convenience, without penalty, provided that written notice has been delivered to the Contractor at least ninety (90) calendar days prior to such termination date. In the event of termination, in whole or in part, under this paragraph, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials related to the terminated portion of the contract including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The Contractor will be entitled to compensation upon submission of an invoice and proper proof of claim for the services and products satisfactorily rendered, subject to all payment provisions of the Agreement. Payment is limited to expenses necessarily incurred pursuant to this Agreement up to the date of termination.

11. Intellectual Property Rights

a. Ownership

(1) Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

(2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks,

applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

(3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of DHCS' Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of DHCS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHCS. **Except as otherwise set forth herein, neither the Contractor nor DHCS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to DHCS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHCS in the third-party's license agreement.

(4) Contractor agrees to cooperate with DHCS in establishing or maintaining DHCS' exclusive rights in the Intellectual Property, and in assuring DHCS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DHCS and which result directly or indirectly from this Agreement or any subcontract.

(5) Contractor further agrees to assist and cooperate with DHCS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DHCS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

(1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to DHCS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.

(2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of DHCS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

(1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DHCS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

(2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, shall include DHCS' notice of copyright, which shall read in 3mm or larger typeface: "© *[Enter Current Year e.g., 2010, etc.]*, California Department of Health Care Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Care Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to DHCS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to DHCS, without additional compensation, all its right, title and interest in and to such inventions and to assist DHCS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining DHCS' prior written approval; and (ii) granting to or obtaining for DHCS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and DHCS determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to DHCS.

f. Warranties

(1) Contractor represents and warrants that:

(a) It is free to enter into and fully perform this Agreement.

(b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.

(c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

(d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

(e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.

(f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to DHCS in this Agreement.

(g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

(h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

(2) DHCS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

(1) Contractor shall indemnify, defend and hold harmless DHCS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DHCS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. DHCS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DHCS.

(2) Should any Intellectual Property licensed by the Contractor to DHCS under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DHCS' right to use the licensed Intellectual Property in accordance with this Agreement at no expense to DHCS. DHCS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for DHCS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DHCS shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

(3) Contractor agrees that damages alone would be inadequate to compensate DHCS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DHCS would suffer irreparable harm in the event of such breach and agrees DHCS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, DHCS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

12. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of $100,000 must comply with the following provisions unless said agreement is exempt by law.

a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 7606) section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations.

b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Clean Water Act (33 U.S.C. 1251 et seq.), as amended.

13. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior DHCS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

14. Confidentiality of Information

a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.

b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.

c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.

d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

f. As deemed applicable by DHCS, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

15. Documents, Publications and Written Reports

(Applicable to agreements over $5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds $5,000.

16. Dispute Resolution Process

a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.

(1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.

(2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A

written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code Section 100171.

c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence shall be directed to the DHCS Program Contract Manager.

d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

17. Financial and Compliance Audit Requirements

a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.

b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code Section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code Section 38030).

c. The Contractor, as indicated below, agrees to obtain one of the following audits:

(1) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040)*** and receives **$25,000 or more** from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(2) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040)*** and receives **less than $25,000** per year from any State agency under a direct service contract or agreement, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(3) ***If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by 2 C.F.R. §§ 200.64, 200.70, and 200.90)*** and expends $750,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in 2 C.F.R. 200.501 entitled "Audit Requirements". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:

(a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

(b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.

(4) If the Contractor submits to DHCS a report of an audit other than a 2 C.F.R. 200.501audit, the Contractor must also submit a certification indicating the Contractor has not expended $750,000 or more in federal funds for the year covered by the audit report.

d. Two copies of the audit report shall be delivered to the DHCS program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the DHCS Program Contract Manager shall forward the audit report to DHCS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.

e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The DHCS program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.

f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.

g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.

h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.

i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.

j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.

k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

18. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

19. Novation Requirements

If the Contractor proposes any novation agreement, DHCS shall act upon the proposal within 60 days after receipt of the written proposal. DHCS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHCS will initiate an amendment to this Agreement to formally implement the approved proposal.

20. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 2 CFR 180, 2 CFR 376

b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) violation of Federal or State antitrust statutes; ~~or~~ commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, obstruction of justice, or the commission of any other offense indicating a lack of business integrity or business honesty that seriously affects its business honesty;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and

(4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(5) Have not, within a three-year period preceding this application/proposal/agreement, engaged in any of the violations listed under 2 CFR Part 180, Subpart C as supplemented by 2 CFR Part 376.

(6) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.

(7) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHCS Program Contract Manager.

d. The terms and definitions herein have the meanings set out in 2 CFR Part 180 as supplemented by 2 CFR Part 376.

e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this Agreement for cause or default.

21. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.

c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

22. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, DHCS shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

23. Payment Withholds

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, DHCS may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or $3,000 whichever is greater, until DHCS receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

24. Performance Evaluation

(Not applicable to grant agreements.)

DHCS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with DHCS. Negative performance evaluations may be considered by DHCS prior to making future contract awards.

25. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

26. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to DHCS or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

27. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

28. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

29. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

30. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.

b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.

c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.

d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

31. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.

b. As used herein, fringe benefits do not include:

(1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
(2) Director's and executive committee member's fees.
(3) Incentive awards and/or bonus incentive pay.
(4) Allowances for off-site pay.
(5) Location allowances.
(6) Hardship pay.
(7) Cost-of-living differentials

c. Specific allowable fringe benefits include:

(1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.

d. To be an allowable fringe benefit, the cost must meet the following criteria:

(1) Be necessary and reasonable for the performance of the Agreement.
(2) Be determined in accordance with generally accepted accounting principles.
(3) Be consistent with policies that apply uniformly to all activities of the Contractor.

e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

(1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.

(2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.

(3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

32. Suspension or Stop Work Notification

a. DHCS may, at any time, issue a notice to suspend performance or stop work under this Agreement. The initial notification may be a verbal or written directive issued by the funding Program's Contract Manager. Upon receipt of said notice, the Contractor is to suspend and/or stop all, or any part, of the work called for by this Agreement.

b. Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within 30 working days of the verbal notification. The suspension or stop work notification shall remain in effect until further written notice is received from DHCS. The resumption of work (in whole or part) will be at DHCS' discretion and upon receipt of written confirmation.

(1) Upon receipt of a suspension or stop work notification, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.

(2) Within 90 days of the issuance of a suspension or stop work notification, DHCS shall either:

(a) Cancel, extend, or modify the suspension or stop work notification; or

(b) Terminate the Agreement as provided for in the Cancellation / Termination clause of the Agreement.

c. If a suspension or stop work notification issued under this clause is canceled or the period of suspension or any extension thereof is modified or expires, the Contractor may resume work only upon written concurrence of funding Program's Contract Manager.

d. If the suspension or stop work notification is cancelled and the Agreement resumes, changes to the services, deliverables, performance dates, and/or contract terms resulting from the suspension or stop work notification shall require an amendment to the Agreement.

e. If a suspension or stop work notification is not canceled and the Agreement is cancelled or terminated pursuant to the provision entitled Cancellation / Termination, DHCS shall allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.

f. DHCS shall not be liable to the Contractor for loss of profits because of any suspension or stop work notification issued under this clause.

33. Public Communications

"Electronic and printed documents developed and produced, for public communications shall follow the following requirements to comply with Section 508 of the Rehabilitation Act and the American with Disabilities Act:

A. Ensure visual-impaired, hearing-impaired and other special needs audiences are provided material information in formats that provide the most assistance in making informed choices."

34. Compliance with Statutes and Regulations

a. The Contractor shall comply with all California and federal law, regulations, and published guidelines, to the extent that these authorities contain requirements applicable to Contractor's performance under the Agreement.

b. These authorities include, but are not limited to, Title 2, Code of Federal Regulations (CFR) Part 200, subpart F, Appendix II; Title 42 CFR Part 431, subpart F; Title 42 CFR Part 433, subpart D; Title 42 CFR Part 434; Title 45 CFR Part 75, subpart D; and Title 45 CFR Part 95, subpart F. To the extent applicable under federal law, this Agreement shall incorporate the contractual provisions in these federal regulations and they shall supersede any conflicting provisions in this Agreement.

35. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of $100,000 per Section 1352 of Title 31, U.S.C.)

a. Certification and Disclosure Requirements

(1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of Title 31, U.S.C., and which exceeds $100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.

(2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.

(3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information

contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;

(b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or

(c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.

(4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding $100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.

(5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHCS Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

Attachment 1
State of California
Department of Health Care Services

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, “Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of $100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Napa County Name of Contractor	 Printed Name of Person Signing for Contractor
240217B Contract / Grant Number	 Signature of Person Signing for Contractor
 Date	Chair of the Board of Supervisors Title

After execution by or on behalf of Contractor, please return to:

California Department of Health Care Services
Local Governmental Financing Division
County-Based Medi-Cal Administrative Activities Unit
1501 Capitol Avenue
P.O. Box 997436, MS 2628
Sacramento, CA 95899-7436

DHCS reserves the right to notifiy the contractor in writing of an alternate submission address.

Attachment 2

CERTIFICATION REGARDING LOBBYING

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
[ ] a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	[ ] a. bid/offer/application b. initial award c. post-award	[ ] a. initial filing b. material change For Material Change Only: Year _____ quarter _____ date of last report _____.

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ___, if known: Congressional District, If known:	Congressional District, If known:
6. Federal Department/Agency	7. Federal Program Name/Description: CDFA Number, if applicable: _____
8. Federal Action Number, if known:	9. Award Amount, if known: $
10.a. Name and Address of Lobbying Registrant *(If individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from 10a.* *(Last name, First name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person that fails to file the required disclosure shall be subject to a not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: Chair of the Board of Supervisors Telephone No.: _____ Date: _____

Federal Use Only	Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriateclassification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if itis, or expects to be,a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection *of inform*ation. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

EXHIBIT E
CONTRACTOR'S PRIVACY AND SECURITY COMMITMENTS
(July 1, 2023 through June 30, 2024)

This Exhibit shall constitute the "Agreement" between **COPE FAMILY CENTER,** ("CONTRACTOR") and Napa County, and applies to the functions Contractor will perform on behalf of Napa County (collectively, "Services"), that are identified in the Master Agreement.

1. **Purpose.** This Agreement is intended to ensure that CONTRACTOR will establish and implement appropriate privacy and security safeguards with respect to Napa County Confidential Information. Napa County Confidential Information includes:

- Personally Identifiable Information: such as name, date of birth, address, phone number, Social Security Number, California Identification Number, Driver's License Number, email address, ip address, and any other data that could reasonably identify an individual; pertaining to clients or employees of Napa County; and
- Medical Information: any individually identifiable information, in electronic or physical form, pertaining to the past, present, or future medical condition of clients or employees of Napa County

2. **Permitted Uses and Disclosures.**

(a) Except as otherwise limited in this Agreement, CONTRACTOR may use or disclose Napa County Confidential Information to perform functions, activities, or services for, or on behalf of Napa County for the purposes specified in Attachment A to this Exhibit, which if completed and attached hereto is incorporated by reference, or as otherwise specified in the Master Agreement, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate California Civil Code Sections 56-56.37, collectively known as the Confidentiality of Medical Information Act (CMIA), and/or any other relevant state and federal privacy laws and regulations. CONTRACTOR must also make reasonable efforts to limit the use and disclosure of Napa County Confidential Information to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

(b) Except as otherwise limited in this Agreement, CONTRACTOR may use Napa County Confidential Information for the proper management and administration of the CONTRACTOR, or to carry out the legal responsibilities of CONTRACTOR.

(c) Except as otherwise limited in this Agreement, CONTRACTOR may disclose Napa County Confidential Information for the proper management and administration of the CONTRACTOR provided that disclosures are required by law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) CONTRACTOR may use Napa County Confidential Information to report violations of law to appropriate Federal and State authorities.

(e) CONTRACTOR may not use or disclose Napa County Confidential Information in a manner that would violate CMIA (or other relevant state and federal privacy laws and

regulations) if done by Napa County, except for the specific uses and disclosures set forth herein.

3. **Appropriate Safeguards.**

(a) CONTRACTOR agrees to use appropriate safeguards to prevent the use or disclosure of Napa County Confidential Information other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Napa County Confidential Information that is created, received, maintained, or transmitted on behalf of Napa County and limit its use and disclosure to the minimum necessary.

(b) Safeguarding Electronic Napa County Confidential Information. CONTRACTOR must secure all Electronic Napa County Confidential Information by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with the National Institute of Standards Technology (NIST) Standards and Federal Information Processing Standards (FIPS) as applicable. Should CONTRACTOR fail to comply with this provision, it agrees to hold harmless, defend at its own expense and indemnify Napa County in accordance with the terms of Section 6 of the Agreement, "Indemnification".

(c) Destruction of Napa County Confidential Information on paper, film, or other hard copy media must involve either shredding or otherwise destroying it so that it cannot be read or reconstructed.

(d) Should any employee or subcontractor of CONTRACTOR have direct, authorized access to computer systems of Napa County that contain Napa County Confidential Information, CONTRACTOR shall immediately notify Napa County of any change of such personnel (e.g., employee or subcontractor termination, or change in assignment where such access is no longer necessary) in order for Napa County to disable the previously authorized access.

4. **Reporting Unauthorized Uses and Disclosures.**

(a) CONTRACTOR agrees to notify Napa County of any access, use or disclosure of Napa County Confidential Information not permitted or provided for by the Agreement of which it becomes aware. Such notification will be made immediately after discovery by telephone call at (707) 253-4523, plus e-mail at Privacy.Officer@countyofnapa.org, and will include, to the extent possible, the identification of each Individual whose Napa County Confidential Information has been, or is reasonably believed by the CONTRACTOR to have been, accessed, acquired, used or disclosed, a description of the Napa County Confidential Information involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by CONTRACTOR.

(b) A breach or unauthorized access, use, or disclosure shall be treated as discovered by CONTRACTOR on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the CONTRACTOR or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent, or other representative of CONTRACTOR

(c) In meeting its obligations under this section, it is understood that CONTRACTOR is not acting as the Napa County's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Agreement, it is understood and agreed that CONTRACTOR is at all times acting as an independent contractor in providing services pursuant to this Agreement and the Master Agreement.

5. **Mitigating the Effect of a Breach, Security Incident, or Unauthorized Access, Use or Disclosure of Napa County Confidential Information**

(a) CONTRACTOR agrees to mitigate, to the greatest extent possible, any harm that results from the breach, security incident, or unauthorized access, use or disclosure of Napa County Confidential Information by CONTRACTOR or its employees, officers, subcontractors, agents, or other representatives.

(b) Following a breach, security incident, or any unauthorized access, use or disclosure of Napa County Confidential Information, CONTRACTOR agrees to take any and all corrective action(s) necessary to prevent recurrence, to document any such action(s), and to make this documentation available to Napa County.

(c) Except as required by law, CONTRACTOR agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of Napa County Confidential Information without obtaining Napa County's prior written consent. Napa County hereby reserves the sole right to determine whether and how such notice is to be provided to any Individuals, regulatory agencies, or others as may be required by law, regulation, or contract terms, as well as the contents of such notice. When applicable law requires the breach be reported to a federal or state agency or that notice be given to media outlets, CONTRACTOR shall cooperate with and coordinate with Napa County to ensure such reporting is in compliance with applicable law and to prevent duplicate reporting, and to determine responsibilities for reporting.

6. **Indemnification.**

To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees or volunteers or other contractors or their subcontractors. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either Party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

7. **Individuals' Rights.**

(a) CONTRACTOR agrees to provide access, at the request of Napa County, and in the time and manner designated by the Napa County, to Napa County Confidential Information to Napa County or, as directed by Napa County, to an Individual.

8. **Agents and Subcontractors of CONTRACTOR.**

(a) CONTRACTOR agrees to enter into written agreements with any agent, subcontractor or vendor, to whom it provides Napa County Confidential Information received from Napa County or created, received , maintained or transmitted by CONTRACTOR on behalf of Napa

County, that impose the same restrictions, conditions and requirements that apply through this Agreement to CONTRACTOR with respect to such information, including the requirement to immediately notify the CONTRACTOR of any instances of any breach, security incident, intrusion, or unauthorized access to or use or disclosure of Napa County Confidential Information of which it becomes aware. Upon request, CONTRACTOR shall provide copies of such agreements to Napa County.

(b) CONTRACTOR shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

9. **Audit, Inspection, and Enforcement.**

(a) CONTRACTOR agrees to make internal practices, books, and records relating to the use and disclosure of Napa County Confidential Information received from Napa County or created, received, maintained, or transmitted by CONTRACTOR on behalf of Napa County, available to any state or federal agency, for the purposes of determining compliance with applicable state and federal privacy laws and regulations.

(b) With reasonable notice, Napa County and its authorized agents or contractors may audit and/or examine CONTRACTOR's facilities, systems, policies, procedures, and documentation relating to the security and privacy of Napa County Confidential Information to determine compliance with the terms of this Agreement. CONTRACTOR shall promptly correct any violation of this Agreement found by Napa County and shall certify in writing that the correction has been made. CONTRACTOR's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Napa County's enforcement rights under this Agreement.

10. **Permissible Requests by Napa County**. Napa County shall not request that CONTRACTOR use or disclose Protected Napa County Confidential Information in any manner that would not be permissible under the relevant state and federal privacy laws and regulations if done by Napa County.

11. **Term and Termination.**

(a) The terms of this Agreement shall remain in effect for the duration of all services provided by CONTRACTOR under the Master Agreement and for so long as CONTRACTOR remains in possession of any Napa County Confidential Information received from Napa County, or created, received, maintained or transmitted by CONTRACTOR on behalf of Napa County unless Napa County has agreed in accordance with this Section 11 that it is not feasible to return or destroy all Napa County Confidential Protected Information.

(b) Upon termination of the Master Agreement, CONTRACTOR shall recover any Napa County Confidential Information relating to the Master Agreement and this Agreement in its possession and in the possession of its subcontractors, agents, or representatives. CONTRACTOR shall return to Napa County, or destroy with the consent of Napa County, all such Napa County Confidential Information, in any form, in its possession and shall retain no copies.

(c) If CONTRACTOR believes it is not feasible to return or destroy the Napa County Confidential Information, CONTRACTOR shall so notify Napa County in writing. The notification shall include: (1) a statement that the CONTRACTOR has determined that it is not

feasible to return or destroy the Napa County Confidential Information in its possession, and (2) the specific reasons for such determination. CONTRACTOR may retain only that Napa County Confidential Information which is necessary for CONTRACTOR to continue its proper management and administration or to carry out its legal responsibilities. If Napa County agrees in its sole discretion that CONTRACTOR cannot feasibly return or destroy the Napa County Confidential Information, CONTRACTOR shall ensure that any and all protections, requirements and restrictions contained in the Master Agreement and this Agreement shall be extended to any Napa County Confidential Information for so long as CONTRACTOR maintains such Napa County Confidential Information, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the Napa County Confidential Information infeasible.

(d) Napa County may immediately terminate the Master Agreement if it determines that CONTRACTOR has violated a material term of this Agreement.

(e) Survival. The obligations of CONTRACTOR under this Section 11 shall survive this Agreement.

12. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Napa County and CONTRACTOR to comply with the requirements of relevant state and federal privacy laws and regulations.

13. **Notices.**

(a) All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

(b) Any mailed notice, demand, request, consent, approval, or communication that Napa County desires to give to CONTRACTOR shall be addressed to CONTRACTOR at the mailing address set forth in the Master Agreement.

(c) Any mailed notice, demand, request, consent, approval, or communication that CONTRACTOR desires to give to Napa County shall be addressed to Napa County at the following address:

Napa County Privacy Officer
2751 Napa Valley Corporate Drive
Napa, CA 94558

(707) 253-4715

(d) For purposes of subparagraphs (b) and (c) above, either party may change its address by notifying the other party of the change of address.

14. **Lost Revenues; Penalties/Fines.**

(a) Penalties/Fines for Failure to Comply with relevant privacy laws and regulations. CONTRACTOR shall pay any penalty or fine assessed against Napa County arising from CONTRACTOR's failure to comply with the obligations imposed by relevant state and federal privacy laws and regulations.

(b) Penalties/Fines (other). CONTRACTOR shall pay any penalty or fine assessed against Napa County arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines, which may be assessed under a Federal or State False Claims Act provision.

NAPA COUNTY AGREEMENT NO. 240219B
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the 1st of July 2023, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and **PUERTAS ABIERTAS COMMUNITY RESOURCE CENTER**, a California nonprofit corporation, whose mailing address is P.O. Box 3009, Napa, CA 94558, hereinafter referred to as "CONTRACTOR." COUNTY and CONTRACTOR may be referred to below collectively as "Parties" and individually as "Party."

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services in order for CONTRACTOR to provide assistance with outreach, enrollment, retention, and utilization of Medi-Cal for all potentially eligible children/families throughout Napa County; and CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

TERMS

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the Terms and Conditions and their own Exhibits, which together are attached hereto and incorporated by this reference as though set forth in full herein. The Section numbers of any portion of this Agreement may at times be referred to either as "Sections" or "Paragraphs" interchangeably.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto as of the date first above written.

NAPA COUNTY, a political subdivision of the State of California	**CONTRACTOR**
By _____ **JOELLE GALLAGHER**, **Chair of the Board of Supervisors** ATTEST: NEHA HOSKINS, Clerk of the Board By: _____ DATE APPROVED BY THE BOARD: _____ Processed by: _____ Deputy	Blanca Huijon BLANCA HUIJON, Executive Director

Maximum Amount of this Agreement: $24,828	APPROVED AS TO FORM BY NAPA COUNTY COUNSEL
Term Expires: June 30, 2024	
Automatic renewal of term does not apply.	By*: Jo Ann Iwasaki Parker, Deputy CC, by e-signature* Date: 12/27/2023

TERMS AND CONDITIONS OF NAPA COUNTY AGREEMENT NO. 240219B

SECTION 1. Contract Administration

For purposes of this Agreement, the following shall apply:

1.1 "Department" shall mean: Health and Human Services Agency

1.2 "Director" shall mean the person elected or appointed to the chief management position of the Department.

1.3 "Contract Administrator" shall be: Contracts Analyst or such other person as designated by the Department Director. The address for COUNTY's Contract Administrator shall be: 2751 Napa Valley Corporate Drive, Building B, 2nd Floor, Napa, CA 94559.

1.4 The Program Manager for COUNTY shall be: Christine Wu, M.D., Public Health Officer, 2751 Napa Valley Corporate Drive, Building B, 2nd Floor, Napa, CA 94559.

1.5 The Contract Contact Person for CONTRACTOR shall be: Blanca Huijon, P.O. Box 3009, Napa, CA 94558.

1.6 CONTRACTOR is a [ ] sole proprietor [ ] partnership [X] corporation [ ] public agency [ ] other (specify) .

1.7 The source of funding for this Agreement shall be: Health and Human Services Agency General Fund

1.8 In entering into this Agreement, CONTRACTOR acknowledges and agrees to abide by the applicable terms of the following COUNTY-entity agreements, and as they may amended from time to time: Department of Health Care Services – Napa County Agreement No. 230296B

These agreements are on file with the Napa County Clerk of the Board of Supervisors and may be accessed at **https://www.countyofnapa.org/DocumentCenter/** under "Departments/Health and Human Services/Administration/Contracts and Administration Documents" (See also Section 2, Paragraphs 2.15(b)(2) and 2.35)

SECTION 2. General Terms and Conditions.

Attached hereto and incorporated by this reference as Exhibit C is "SECTION 2. General Terms and Conditions – Version 12", which shall be referred to herein as the "General Terms and Conditions" and which shall apply to this Agreement unless otherwise specifically limited or excluded by more specific provisions.

Due to changes in the laws, future versions of General Terms and Conditions shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR, effective within such time period as is designated in Paragraph 2.10 (Other Termination) plus 15 days or as mandated by local, state or federal laws or regulations, whichever date is sooner.

SECTION 3. Specific Terms and Conditions.

The following Specific Terms and Conditions provide additional terms and conditions or modify the General Terms and Conditions of this Agreement. A Specific Term and Condition shall control if a

conflict exists with a General Term and Condition.

3.1 The following Specific Terms and Conditions apply when CONTRACTOR's obligations under this Agreement involve the following as designated by an "X":

[X] (a) Contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (General Terms and Conditions Paragraph 2.8(b) applies).

[ ] (b) Construction or pre-construction related services (General Terms and Conditions Paragraph 2.19(e) applies).

[ ] (c) Work on or the supplying of any software systems or equipment containing or suspected of containing clocks or embedded chips functioning as or dependent upon the use of clocks or calendars (General Terms and Conditions Paragraph 2.29 applies).

[X] (d) Services covered by a Federal Health Care Program (General Terms and Conditions Paragraph 2.31 applies).

[ ] (e) Services covered by a State Medi-Cal Specialty Mental Health Program (General Terms and Conditions Paragraph 2.32 applies).

[ ] (f) Mental Health Activities (General Terms and Conditions Paragraph 2.33 applies).

[X] (g) Services involving the receipt, use or disclosure of protected health information: A determination has been made by COUNTY's Privacy Officer that CONTRACTOR shall not provide services under this Agreement as a Business Associate to COUNTY. General Terms and Conditions Paragraph 2.34(b) does not apply to this Agreement.

[ ] (h) Services provided under COUNTY's Managed Care Provider Program, which shall be subject to all the terms and conditions set forth in the Napa County Mental Health Managed Care Provider Manual, herein incorporated by reference and on file with the Clerk of the Napa County Board of Supervisors.

[ ] (i) Services as a provider for which CONTRACTOR has submitted a "Provider Application," which CONTRACTOR warrants that the information contained in said application is accurate and understands that any inaccuracies may be grounds for termination of this Agreement by COUNTY. CONTRACTOR authorizes COUNTY to consult with third parties, including but not limited, to the National Practitioner Data Bank or other applicable licensing boards.

[ ] (j) Services involving the use or disclosure of personally identifiable information that are performed as a subcontractor under COUNTY's contract with another entity when that contract requires COUNTY to include its applicable terms in COUNTY's subcontracts. (General Terms and Conditions Paragraph 2.35 applies.)

[ ] (k) Services determined by the Department Director to be covered by Department's Code of Ethics. (General Terms and Conditions Paragraph 2.38 applies.) CONTRACTOR understands that, by entering into this Agreement, CONTRACTOR acknowledges that CONTRACTOR has received, read, and understands the Code of Ethics, and agrees to abide by the terms therein as applicable to CONTRACTOR's activities under this Agreement. Department shall provide CONTRACTOR with copies of Department's Code of Ethics prior to the execution of the Agreement. CONTRACTOR further understands that on an annual basis CONTRACTOR shall provide written certification to Department that CONTRACTOR has received, read, understands, and will abide by Department's Code of Ethics.

[X] (l) Services have been determined by the Department Director, or may be determined at a later date, that CONTRACTOR is a subrecipient or pass-through entity and is therefore required to meet all of the requirements found in 2 C.F.R. § 200.331. (General Terms and Conditions 2.40

applies.) COUNTY shall notify CONTRACTOR in accordance with General Terms and Conditions Paragraph 2.13 (Notices), of any change in designation as a subrecipient, and any subsequent increase to the amount of Federal funding CONTRACTOR shall receive under the terms of this Agreement. CONTRACTOR shall be bound thereby upon receipt of notice.

3.2 Source Funding.

(a) Change in Source Funding. Paragraph 1.7 may be unilaterally modified by COUNTY upon written notice to CONTRACTOR who shall be bound thereby immediately upon receipt. The Department Director is delegated the authority to modify Paragraph 1.7 and provide such written notice, but may exercise such authority only after consultation with, and concurrence of, the Napa County Counsel and the Napa County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Napa County Board of Supervisors to modify Paragraph 1.7.

(b) Amendment to Source Funding Agreement. If Paragraph 1.7 identifies a funding source agreement, then any amendment to the funding source agreement shall be automatically incorporated and made a part of this Agreement, effective in accordance with the amended funding source agreement. As a subcontractor of COUNTY, CONTRACTOR shall be bound by the applicable terms of the funding source agreement, and any amendments thereto.

3.3 Statement of Economic Interests. By authorizing its Chair to execute this Agreement on its behalf, COUNTY's Board of Supervisors hereby determines in writing on behalf of COUNTY that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with the disclosure obligations set forth in Paragraph 2.23(b).

3.4 Term of Agreement. Section 2.1 (b) of the General Terms and Conditions does not apply to this Agreement. The term of this Agreement shall commence on the date written on page 1 and shall expire as of **June 30, 2024**, unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Termination for Convenience) or 2.23 (a) (Covenant of No Undisclosed Conflict). The obligations of the Parties under Paragraphs 2.7 (Insurance) and 2.8 (Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes) and 2.21 (Access to Records/Retention).

3.5 COUNTY delegates its authority to the Director of the Health and Human Services Agency to approve future amendments to Exhibits A and B, attached to this Agreement, provided that any such amendment does not materially alter the nature of the services to be provided or increase the maximum compensation available under this Agreement.

SECTION 4. Incorporated Documents.

The following documents are incorporated herein by this reference and attached hereto and labeled as the following Exhibit letters:

Exhibit A: Scope of Work
Exhibit B: Compensation
Exhibit C: "Section 2, General Terms and Conditions, Version 12"
Exhibit D(F): Department of Health Care Services "Special Terms and Conditions"
Exhibit E: Contractor's Privacy and Security Commitments

EXHIBIT A
SCOPE OF WORK
(July 1, 2023 through June 30, 2024)

MEDI-CAL ADMINISTRATIVE ACTIVITIES

Medi-Cal Administrative Activities (MAA) are activities performed that are necessary for the proper and efficient administration of the Medi-Cal State Plan. The Local Government Agency (LGA), or the designated entity responsible for administering MAA locally, is Napa County Health and Human Services Agency (HHSA). The LGA may subcontract with community-based organizations to perform MAA.

In FY 13-14, HHSA launched a community-wide effort to outreach and enroll uninsured and potentially eligible residents in Medi-Cal coverage and to link them to needed health/behavioral health services. The essential component of this effort is subcontracting with qualified and interested CBOs to link Medi-Cal eligible and potentially eligible individuals with Medi-Cal covered services as well assist in the Medi-Cal application process. Currently, many CBOs are the first-place low-income individuals and families go for services including: Medi-Cal and Medi-Cal covered service information, referral, and facilitation of the Medi-Cal application. HHSA recognizes the unique relationship that CBOs have with the Medi-Cal eligible population and wishes to maximize this relationship in assuring the availability and accessibility of Medi-Cal services.

Eligibility for Medi-Cal was expanded under the Affordable Care Act and more residents are eligible for Medi-Cal. This project intends to have a positive, proactive impact in reaching the uninsured by leveraging the effectiveness that CBOs have in linking people to the appropriate services within the county. The project also intends to ensure there is a greater chance that anyone who needs health/behavioral health care successfully connects and engages in those services.

As a participant in this project, CONTRACTOR is expected to carry out the duties specified below to ensure to the greatest extent practicable that: Uninsured Napa residents who are eligible for Medi-Cal coverage receive it and access the care they need.

Type of MAA Activities to be performed:

1. **Allowable Medi-Cal Outreach**

   This activity may consist of discrete campaigns or may be an ongoing activity. This activity is directed to groups or individuals targeted to two goals:

   - Bringing potentially eligible people into the Medi-Cal system for the purpose of determining Medi-Cal eligibility; and
   - Bringing Medi-Cal eligible people into Medi-Cal services. Outreach may consist of discrete campaigns or may be an ongoing activity, such as: sending teams of employees into the community to contact homeless alcoholics or drug abusers; establishing a telephone or walk-in service for referring persons to Medi-Cal services or eligibility offices; operating a drop-in community center for underserved populations, such as minority teenagers where Medi-Cal eligibility and service information is disseminated.

The following activities describe how outreach shall be performed:

a. Outreach campaigns directed to the entire population to encourage potential Medi-Cal eligibles to apply for Medi-Cal. These campaigns are Medi-Cal only eligibility outreach campaigns.

b. Outreach campaigns directed toward bringing Medi-Cal eligibles into Medi-Cal covered services. In such campaigns, the language should clearly indicate that the message is directed to only persons eligible for Medi-Cal, and not the general public. These campaigns are service campaigns, targeted to specific Medi-Cal services, such as Early and Periodic Screening, Diagnosis and Treatment (EPSDT).

c. Informing children and their families on how to effectively access, use and maintain participation in all health resources under the Medi-Cal program.

d. Informing individuals or the general public about the benefits and services that the Medi-Cal program offers and encouraging and referring them to apply for Medi-Cal benefits.

e. Providing initial referral assistance to families and individuals to Medi-Cal services.

Note: A health education program or campaign may be allowable as a Medi-Cal administrative cost if it is targeted specifically to Medi-Cal services and for Medi-Cal eligible individuals, such as an educational campaign on immunization addressed to parents of Medi-Cal children.

2. <u>Performance Targets</u>

CONTRACTOR will participate in at least twenty-four (24) outreach events.

CONTRACTOR will outreach to at least one thousand (1000) individuals, providing information about Medi-Cal coverage and Medi-Cal covered services.

CONTRACTOR will refer and successfully link at least five hundred (500) individuals to Medi-Cal coverage and/or Medi-Cal covered services.

3. <u>Quarterly Reporting</u>

CONTRACTOR shall provide quarterly reports as indicated in the schedule included in Exhibit B, “COMPENSATION”. Reports will include documentation to support the number and type of outreach events (e.g., flyers, brochures, dates, and announcements of events) and the number of individuals and/or families reached through ongoing outreach efforts. The reports will also include documentation to support the number of individuals and/or families assisted with application or re-determination for Medi-Cal (e.g., client count of applications) and the number of Medi-Cal beneficiaries linked to Medi-Cal services (e.g., client count). Finally, the reports will include certification that costs incurred were directly related to the provision of MAA allowable activities.

4. Compliance with MAA Requirements

CONTRACTOR shall comply with MAA requirements such as completing mandated covered contractor provisions and providing documentation that the organization is meeting requirements of the MAA claiming plan for which they are included such as submitting to HHSA the job descriptions for the staff performing MAA activities.

CONTRACTOR understands that the MAA activities and expenditures performed by CONTRACTOR are subject to the requirements set forth in the Department of Health Care Services (DHCS) County-Based MAA Program Operational Plan (approved July 1, 2017), which is incorporated herein by reference and can be found at the following link: https://www.dhcs.ca.gov/provgovpart/Documents/ACLSS/CMAA/CMAA-TCM_Imp_Plan/CMAA-TCM-Operational_Plan-2018.pdf

CONTRACTOR shall comply with DHCS MAA Operational Plan requirements.

CONTRACTOR understands that the information presented to COUNTY by CONTRACTOR under this Agreement shall be used for filing a claim with the Federal Government for federal funds, and that any knowing misrepresentation constitutes a violation of the Federal False Claims Act.

EXHIBIT B
COMPENSATION
(July 1, 2023 through June 30, 2024)

MEDI-CAL ADMINISTRATIVE ACTIVITIES

COUNTY shall reimburse CONTRACTOR for Medi-Cal Administrative Activities (MAA) described in Exhibit A as follows:

1. **Amount**

   CONTRACTOR shall be reimbursed up to a maximum of $24,828 for Medi-Cal Outreach as described in Exhibit A for the term of the Agreement. Funding to the CONTRACTOR shall be contingent upon availability of funds for source of certified public expenditure.

   CONTRACTOR shall be able to verify that expenditures related to its provision of MAA activities represent accurately identifiable and eligible costs, and that CONTRACTOR has excluded any non-claimable non-salary costs in compliance with the Department of Health Care Services (DHCS) County-Based MAA Program Operational Plan (approved July 1, 2017), which is incorporated herein by reference and can be found at the following link: https://www.dhcs.ca.gov/provgovpart/Documents/ACLSS/CMAA/CMAA-TCM_Imp_Plan/CMAA-TCM-Operational_Plan-2018.pdf

2. **Certified Public Expenditure**

   This Agreement is funded by HHSA General funds. CONTRACTOR may not use the funds to claim reimbursement for any other Federal program.

3. **Method of Payment**

   CONTRACTOR must submit an invoice or claim form to the County Fiscal Analyst, not to exceed the contract maximum. Actual annual reimbursement shall be based on CONTRACTOR's actual cost, not to exceed the annual maximum operating budget amount in each Fiscal Year. The quarterly reports and invoices due, as noted below, shall identify the activities conducted and expenditures made during the previous quarter ending on the last date of the calendar month prior to the report due date. Payment will be made following receipt of the report and invoice. COUNTY shall not release payments until CONTRACTOR has submitted reports for the previous quarter.

CONTRACT PERIOD	REPORT/INVOICE DUE DATE
July 1, 2023 – September 30, 2023	Upon Contract Execution
October 1, 2023 – December 31, 2023	January 31, 2024
January 1, 2024 – March 31, 2024	April 30, 2024
April 1, 2024 – June 30, 2024	July 15, 2024

CONTRACTOR shall, on each quarterly invoice, certify that the expenditures incurred represent accurate identifiable and eligible costs, and that CONTRACTOR's expenditures were made on eligible MAA claimable activities, as set forth in Exhibit A of this Agreement. CONTRACTOR's expenditures incurred for each of the two MAA activities shall be separately identified. CONTRACTOR shall provide certification in a manner, and on an invoice, provided by COUNTY.

4. Contract Monitoring

COUNTY will meet with CONTRACTOR during the initial months/quarters of this agreement to review documentation that supports MAA invoicing and to provide technical assistance as needed. CONTRACTOR shall meet at least once a year with COUNTY thereafter to coordinate and review fulfillments of contract terms and address any potential impediments to the fulfillment of the terms of this agreement. Such review shall extend to an examination of type and quantity of services provided, interagency coordination, and any other issues pertinent to this agreement.

- CONTRACTOR is responsible for maintaining all documentation required for monitoring.
- CONTRACTOR shall request technical assistance from the COUNTY regarding elements of the contract with which they need assistance. COUNTY shall consider any such request and shall provide technical assistance to the CONTRACTOR if the COUNTY has the capacity and capability to do so. CONTRACTOR maintains responsibility for ensuring that its services and activities are in compliance with applicable regulations.
- COUNTY normally shall provide thirty (30) day notice of the site visit to the CONTRACTOR and shall specify the documentation that will need to be available at the time of the visit.
- Under normal circumstances, the visit may require the review of the following documents: records that delineate the MAA activities from other activities, support full expenditure of funding and that expenditures were directly related to MAA activities, demonstrate covered contractor screening provisions have been met, and any other documentation the COUNTY may request to be reviewed to ensure CONTRACTOR meeting state and federal requirements delegated through the contract.
- COUNTY shall provide CONTRACTOR with the opportunity to respond to the COUNTY'S written report of the site visit prior to the report becoming final.
- If the final report identifies material variations between the CONTRACTOR'S activities and the requirements of the contract, the COUNTY may require the CONTRACTOR to prepare a written plan of action to address those variations.

5. Program Name and Number for Federal Claiming

Title 31- Money and Finance, Subtitle V – General Assistance Administration, Chapter 75 - Requirements for Single Audits, Section 7502 requires each pass-through entity provide the sub recipient program names and any identifying numbers from which such assistance is derived. The Catalog of Federal Domestic Assistance (CFDA) number for this federal program is 93.778, Medical Assistance Program.

6. Disallowed Costs

COUNTY shall withhold any payments for services for which documentation of activities and expenditures is not sufficient to claim the Federal Financial share of MAA.

CONTRACTOR shall reimburse COUNTY for all overpayments identified by CONTRACTOR, COUNTY and/or State or Federal oversight agencies as an audit exception.

CONTRACTOR shall make any repayment based on audit exception(s) upon discovery of said exception(s). If reimbursement is required, CONTRACTOR shall reimburse COUNTY within sixty (60) days of identification.

EXHIBIT C

SECTION 2. GENERAL TERMS AND CONDITIONS --VERSION 12

2.1 **Term of the Agreement.**

(a) Term. The term of this Agreement shall commence on the date first written on page 1 and shall expire on the expiration date set forth on page 1 unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Other Termination) or 2.23(a) (Covenant of No Undisclosed Conflict).

(b) Automatic Renewal. The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the same terms and conditions, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30. COUNTY authorizes the Department Director to determine whether this Agreement shall not be renewed and to provide the written notice of the intention to not renew on behalf of COUNTY.

(c) Obligations Extending Beyond Term. The obligations of the parties under Paragraphs 2.7 (Insurance) and 2.8 (Hold Harmless/Defense/Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes), 2.21 (Access to Records/Retention), 2.31 (Compliance with Federal Health Care Program Requirements, 2.32 (Compliance with State Medi-Cal Specialty Mental Health Services Requirements), and 2.33 (Compliance with Mental Health Activities Requirements). To the extent the paragraphs referenced in this Paragraph 2.1 may be modified by Specific Terms and Conditions contained in SECTION 3 of this Agreement, the modifications shall also continue after the expiration date or early termination.

2.2 **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A."

2.3 **Compensation.**

(a) Compensation/Maximum. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates and/or in the amount(s) set forth in Exhibit "B". The maximum payment for the initial term of this Agreement, and the successive maximum payments for each subsequent automatically renewed term, shall each be that maximum amount set forth on page 1; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

(b) Advance Funding.

1. Use of Funds. To the extent this Agreement may permit advance funding of services and expenses, use of funds delineated in this Agreement is limited to the term of performance unless otherwise modified in accordance with Paragraph 2.17 (Amendment/Modification). COUNTY may at its discretion recapture funds obligated under the authority of this Agreement if expenditure plans are not being met.

2. Reversion of Funds. If funds awarded to CONTRACTOR have not been expended in accordance with this Agreement and COUNTY has determined after consultation with CONTRACTOR that funds will not be spent in a timely manner, such funds will revert to COUNTY

for that reason and to the extent permitted by and in a manner consistent with federal and state law, regulations, and policies.

(c) Availability of Funds. It is mutually understood that, for the benefit of both parties, this Agreement may have been written before ascertaining the availability of congressional and/or state legislative appropriation of funds in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. If funding of this Agreement is dependent upon the availability of congressional and legislative appropriation of funds, then:

1. This Agreement shall be deemed automatically terminated if the Congress and and/or the State Legislature do not appropriate funds needed for this Agreement;

2. At COUNTY's discretion, this Agreement may be deemed automatically terminated or this Agreement may be modified or amended in accordance with Paragraph 2.17 (Amendment/Modifications), if the Congress and/or State Legislature do not appropriate sufficient funds needed for this Agreement; and

3. This Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or State Legislature, or any statute enacted by the Congress or State Legislature, that may in any manner affect the provisions, terms, or funding of this Agreement.

(d) COUNTY may withhold any compensation due CONTRACTOR as an offset for any revenues lost arising from an act or omission in billing or documentation practices by CONTRACTOR. CONTRACTOR shall make COUNTY whole for any such lost revenues.

2.4 **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Where expense reimbursement is sought, the invoice shall describe the nature and cost of the expense, the task(s) if any to which the expense was related, and the date incurred. CONTRACTOR shall submit invoices not more often than monthly to the Contract Administrator. After review and approval as to form and content, the invoice shall be submitted to the Napa County Auditor no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Contract Administrator upon request during the term of this Agreement in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

2.5 **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the

compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

2.6 **Specific Performance.** It is agreed that CONTRACTOR, including the agents, employees and authorized subcontractors of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

2.7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 2.7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager,

which shall be filed by CONTRACTOR with the Health and Human Services Agency prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 2.7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 2.7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 2.7.

(f) 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, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2.8 **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees or volunteers or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Obligations Relating to Criminal Background Checks.

1. If CONTRACTOR's obligations under this Agreement involve contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (hereafter in this paragraph referred to as "third persons"), then CONTRACTOR shall investigate by all lawful means, including but not limited to obtaining information from official government sources as the result of taking fingerprints, the criminal background of each and all of its officers, agents, employees, interns, and volunteers, however denominated (hereafter, "employees"), who will have direct personal contact with, or provide direct personal services to, third persons in the performance of this contract. Depending upon the information acquired by its investigation, CONTRACTOR shall not allow any of its employees to have personal contact with, or provide direct personal services to, third persons where it may reasonably be concluded as a result of its investigation that an employee should not have such contact or provide such service. Nothing herein requires CONTRACTOR to investigate the criminal background of an employee who is currently licensed by the State of California and whose license requires a criminal background investigation.

2. Notwithstanding anything to the contrary in (a) or (c), CONTRACTOR shall defend and indemnify COUNTY and its officers, agents and employees from any and all claims, actions, settlements or judgments of whatever kind which may arise from the failure of CONTRACTOR to conduct the criminal background investigation described in this subparagraph (b) or from the failure of CONTRACTOR after the investigation to reasonably disallow an employee from having such personal contact or providing such direct personal service.

(c) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

2.9 **Termination for Cause.**

(a) If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days written notice to the defaulting party in the manner set forth in Paragraph 2.13 (Notices).

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

2.10 **Other Termination.**

(a) This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty
(30)
days prior to the effective date; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination.

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

2.11. **Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement, if and to the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(b) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof.

(c) Notwithstanding the provisions set forth in subparagraph (b) above, if the services involve development or improvement of previously patented inventions or previously copyrighted software, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(d) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

2.12 **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

2.13 **Notices**.

(a) In General. Except as set forth in subparagraph (b) below with respect to notice of automatically adopted provisions, all notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this subparagraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier. Any mailed notice, demand, request, consent, approval or communication that COUNTY desires to give to CONTRACTOR shall be addressed to CONTRACTOR's Contract Contact Person at the mailing address set forth in SECTION 1 of this Agreement. Any mailed notice, demand, request, consent, approval or communication that CONTRACTOR desires to give to COUNTY shall be addressed to COUNTY's Contract Administrator at the mailing address set forth in SECTION 1 of this Agreement. Either party may change its address by notifying the other party of the change of address.

(b) Provisions Adopted Automatically. COUNTY reserves the right to provide notice to CONTRACTOR via facsimile of terms, which automatically become part of this Agreement upon approval by the Napa County Board of Supervisors. Notice delivered by facsimile shall be deemed to have been received on the date a successful delivery confirmation report is generated.

(c) Waiver of Notice by CONTRACTOR. If receipt of notice is refused by CONTRACTOR or if notice is undeliverable due to CONTRACTOR's failure to provide a change of address, notice shall be deemed waived and COUNTY may proceed as though notice were accomplished.

2.14 **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. Future versions of the following policies shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR pursuant to Paragraph 2.13. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment."

(c) Drug and Alcohol Policy.

(d) Napa County Information Technology Use and Security Policy. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

2.15 **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to or created by CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive or create, if any, in trust and confidence, except with the prior written approval of COUNTY, as expressed through the Department Director. Upon cancellation or expiration of this Agreement, to the extent permitted by law, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR agrees to adhere to the applicable terms regarding the privacy and security of Protected Information as set forth in the COUNTY-entity agreements identified in Paragraph 1.8 of Section 1 of this Agreement (Contract Administration). CONTRACTOR shall also observe and comply with those requirements set forth in "Addendum For Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(3) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 2.15.

(4) CONTRACTOR agrees to notify COUNTY, by and through the Napa County Privacy Officer at 2751 Napa Valley Corporate Dr. Suite B, Napa, CA 94559, or 707.253-4715, immediately in the following instances:

(A) Upon the discovery of a breach of PHI/PII/other Protected Information in electronic or other media;

(B) Upon the discovery that PHI/PII/other Protected Information was, or is reasonably believed to have been accessed or acquired by an unauthorized person;

(C) Upon the discovery of a suspected security incident that involves PHI/PII/other Protected Information; or

(D) Upon the discovery of any breach, security incident, intrusion, or unauthorized access, use, or disclosure of PHI/PII/other Protected Information.

(5) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of PHI/PII/other Protected Information, or its unauthorized access to or disclosure of PHI/PII/or other Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) To the extent CONTRACTOR creates, is provided, or has access to applications and records concerning any individual made or kept by COUNTY in connection with public social services (records) as defined in California Welfare & Institutions Code Section 10850, CONTRACTOR shall maintain the confidentiality of such records in accordance with Section 10850, except as otherwise permitted by COUNTY and as necessary for purposes of providing services under this Agreement.

(d) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

(e) HHSA Contractor Security Requirements. Whenever CONTRACTOR utilizes their own equipment to perform work under this Agreement , CONTRACTOR warrants that they have reviewed "HHSA Contractor Security Requirements" and can adhere to the minimum standards at all time. A copy of "HHSA Contractor Security Requirements" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

2.16 **No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Department Director.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

2.17 **Amendment/Modification.**

(a) Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only COUNTY, by the Department Director (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed $10,000), or by COUNTY's Purchasing Agent (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed the maximum aggregate amount for Purchasing Agent contracts as specified by Napa County Code section 2.36.040 (G)) or by COUNTY's Board of Supervisors (in all other instances), in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by "Exhibit A." Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

(b) Notwithstanding anything to the contrary in (a), this Agreement may be unilaterally modified by COUNTY upon written notice to CONTRACTOR under the following circumstances:

1. There is a decrease in state or federal funding needed for this Agreement;
2. There is a no-cost extension of the end date of the Agreement as authorized by a state or federal funding source; or
3. There is a change in state/federal law or regulation requiring a change in a provision of this Agreement.

(c) The Department Director is delegated the authority to modify this Agreement in accordance with subparagraph (b), but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to modify this Agreement under subparagraph (b).

2.18 **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

2.19 **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. **CONTRACTOR acknowledges its**

independent duty to be and to remain informed of all changes in such laws without reliance on COUNTY to provide notice of such changes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS, use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Federal Grant Source. Notwithstanding anything to the contrary in this Agreement, if the funds for this Agreement are derived from a grant from a federal agency, pursuant to 29 CFR 97.36(i)(8) and (9), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the federal granting agency with respect to any discovery or invention which arises or is developed pursuant to this Agreement, and pertaining to any copyrights or rights in data created or otherwise developed when engaging in activities of CONTRACTOR under this Agreement. The requirements and regulations imposed by the federal granting agency are set forth in the original grant agreement specified in Section 1 of the Agreement and are incorporated by reference herein. The original grant agreement is on file with the Clerk of the Board of Supervisors.

(d) Prevailing Wages. If the services to be provided relate to construction or pre-construction-related services, including but not limited to testing, surveying, and inspection, then this Agreement includes the following provisions:

(1) Affected work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying

and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing wages rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or his designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is $30,000 or more.

(e) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 2.19 in all such subcontracts as obligations of the subcontractor.

(f) Notwithstanding any other provisions of this contract, CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement.

2.20 **Taxes.** CONTRACTOR agrees to file all applicable federal and state tax returns or applicable withholding documents and to pay all applicable taxes or to make all required withholdings on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

2.21 **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall

maintain all required records, including clinical documentation, for at least ten (10) years after COUNTY makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

2.22 **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement. The parties further warrant that the signatories to this Agreement are authorized to execute this Agreement on behalf of their respective parties and that any action necessary to bind each such party has been taken by that party prior to entering into this Agreement.

2.23 **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement. The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors terminate this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless COUNTY, through a person authorized to execute this Agreement on behalf of COUNTY, or the Department Director, has determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

2.24 **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the general public.

2.25 **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

2.26 **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

2.27 **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

2.28 **Entirety of Contract.** This Agreement, including documents incorporated by reference and not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

2.29. **Other Terms and Conditions [Reserved.]**

2.30 **Acknowledgment of Funds; Compliance with Government Code Section 7550.**

(a) **In General.** Because the monies provided by COUNTY are funded by taxpayer dollars, it is important that the public know the individuals and organizations that are receiving funds from COUNTY under this Agreement. Therefore, CONTRACTOR shall acknowledge funding received under this Agreement in statements or printed materials relating thereto. All printed materials shall contain the following information in a type size and style appropriate to the materials: "Made possible by funding provided by the County of Napa."

(b) **Compliance With Government Code Section 7550**. In addition, if the Scope of Work includes preparation of a document or written report and the total cost of the work is more than $5,000, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report as required by Government Code section 7550. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

2.31 **Compliance with Federal Health Care Program Requirements.** If CONTRACTOR will be performing services under this Agreement that are covered by a Federal Health Care Program, then:

(a) CONTRACTOR shall observe and comply with all applicable Federal Health Care Program Requirements, including but not limited to those requirements set forth in "Addendum For Contracts Involving Federal Health Care Programs—Revision of March 22, 2021." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and is online at:
www.countyofnapa.org.

(b) CONTRACTOR shall attend and/or provide Compliance Trainings as required by the Department Director unless otherwise deemed exempt by the Department Director or designee thereof.

(c) CONTRACTOR shall make COUNTY whole for any revenues lost arising from an act or omission in billing practices by CONTRACTOR.

(d) CONTRACTOR warrants that no one providing services is an Excluded Individual as such term is defined for Federal Health Care Programs.

(e) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contractors Involving Federal Health Care Programs". Said penalties and fines that may be assessed are as follows: civil monetary penalties of $11,000 per item or service; treble damages for the submission of claims for reimbursement from an excluded health care provider.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the Addenda in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR agrees to abide by COUNTY'S policies entitled "Whistleblower Protections", "The False Claims Act (Federal & State Statutes) & Other Administrative Remedies & Statutes", **"**Federal Anti-Kickback Prohibitions" and "Physicians Referrals – The Stark Law". The policies are on file with the Clerk of the Napa County Board of Supervisors and the Department and are also online at: www.countyofnapa.org.

(i) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.32 **Compliance with State Medi-Cal Specialty Mental Health Services Requirements.** If CONTRACTOR, under this Agreement, is required to and performs services that are covered by a State Medi-Cal Specialty Mental Health Services Program, then:

(a) CONTRACTOR shall observe and comply with all applicable State Medi-Cal Specialty Mental Health Services Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Medi-Cal Specialty Mental Health Services--Revision No. 1" for services performed on or after July 1, 2014. The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator, or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(c) CONTRACTOR is subject to any audits of its services or claims conducted by the Department, the California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(d) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, disallowances for payment or lost revenues identified and discovered by COUNTY that are attributable to CONTRACTOR's actions when performing its obligations under this Agreement, such as insufficient documentation by CONTRACTOR of Medical Necessity or billing errors by CONTRACTOR that preclude COUNTY from claiming the Federal Financial Participation share of Medi-Cal or State General Funds.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the applicable Addendum in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.33 **Compliance with Mental Health Activities Requirements.** If CONTRACTOR, under this Agreement, is required to perform mental health activities, then:

(a) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(b) CONTRACTOR shall be subject to any audits of its services or claims conducted by Department, California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(c) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, lost revenues as identified and discovered by the COUNTY that are attributable to CONTRACTOR's performance under this Agreement such as CONTRACTOR's insufficient documentation of services as required by the Agreement.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any

payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable requirements.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party; CONTRACTOR shall include the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.34 **Compliance with Federal Health Insurance Portability and Accountability Act of 1996.** If CONTRACTOR shall perform services under this Agreement involving the receipt, use, or disclosure of protected health information, then:

(a) Federal and other applicable law. CONTRACTOR shall observe and comply with all applicable requirements of the Federal Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder by the U.S. Department of Health and Human Services (collectively referred to as "HIPAA"), and other applicable laws.

(b) HIPAA Business Associate Agreement. If applicable, CONTRACTOR shall comply with the terms and conditions of the HIPAA Business Associate Agreement previously entered into with COUNTY, which is incorporated by reference herein and on file with the Clerk of the Board of Supervisors.

(c) Use or Disclosure of Protected Health Information. CONTRACTOR may use or disclose protected health information for the purpose of performing functions, activities for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate HIPAA, if done by COUNTY, or the provisions of any applicable HIPAA Business Associate Agreement.

(d) Subcontractors. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall require compliance with all applicable HIPAA provisions, other applicable law, and any applicable HIPAA Business Associate Agreement(s) in such subcontracts as obligations of the subcontractor.

2.35 **Compliance With COUNTY's Obligations Under Contracts With Other Entities.** If CONTRACTOR under this Agreement shall perform services as a subcontractor under COUNTY's contract(s) with other entities, including, but not limited to State and Federal Agencies, and such services involve the use or disclosure of personally identifiable information, then:

(a) CONTRACTOR shall observe and comply with all applicable terms of COUNTY's contract(s) with other entities, including, but not limited to, those requirements set forth in "Addendum For Contracts Involving Personally Identifiable Information Subject to Confidentiality

or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities".

(c) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the "Addendum for Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" in all such subcontracts as obligations of the subcontractor.

2.36 **Napa Health Matters Listing.** If CONTRACTOR is an organization providing health, human, or social services of a type recognized for listing on the "Napa Health Matters" website, CONTRACTOR agrees to maintain a current and accurate listing on www.NapaHealthMatters.org for such services.

2.37 **Licensure Status**.

(a) License in Good Standing. If CONTRACTOR is providing services under this Agreement as a state-licensed professional, CONTRACTOR shall ensure that CONTRACTOR's professional license is in good standing with all applicable licensing boards. CONTRACTOR understands COUNTY may terminate the Agreement if CONTRACTOR fails to maintain a current professional license in good standing**.** For purposes of this Agreement, "license in good standing" means there is no suspension, revocation or probation for any reason (including the failure to pay licensing fees), nor any restriction upon the provisions of the license: including, but not limited to, restrictions placed by a licensing agency upon CONTRACTOR's license pursuant to any consent or settlement agreement or to an administrative decision of the licensing agency.

(b) Expiration of License. In the event that CONTRACTOR's professional license is not renewed on or before its expiration, CONTRACTOR shall neither provide nor be reimbursed for services pursuant to this Agreement commencing the day after license expiration and until CONTRACTOR's professional license is renewed. For purposes of this Agreement, renewal date is the date the licensing board issues a renewed license, and it is irrelevant whether the licensing board subsequently recognizes any lapse in licensure.

2.38 **Code of Ethics**. CONTRACTOR understands that Napa County Health and Human Services (HHSA) has adopted a Code of Ethics. If the Department Director determines that the HHSA Code of Ethics applies to CONTRACTOR's activities under this Agreement, CONTRACTOR shall read, understand, and abide by the Code of Ethics, and CONTRACTOR shall on an annual basis provide written certification to HHSA that CONTRACTOR has received, read, understands, and will abide by HHSA's Code of Ethics. The Code of Ethics may be found online at **www.countyofnapa.org** or may be obtained from HHSA upon written request.

2.39 **Electronic Billing System**. CONTRACTOR understands that Napa County Health and Human Services (HHSA) operates an electronic billing system program, which seeks reimbursement from the State of California for the delivery of alcohol, drug abuse and mental health services. If CONTRACTOR provides any services related to alcohol, drug abuse or mental health services under the terms of CONTRACTOR's Agreement, CONTRACTOR agrees, upon request of the Director of HHSA or the Director's designee, to implement the COUNTY's sponsored electronic health record system as part of CONTRACTOR's requirement for the delivery of these services.

2.40 **Audit Report Requirements.** If COUNTY has determined that CONTRACTOR is a "subrecipient" (also known as a "pass-through entity") as defined in 2 C.F.R. § 200 et. seq., CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. § 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement. CONTRACTOR shall observe and comply with all applicable Audit Report Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Federal Awards." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

EXHIBIT D(F)
DEPARTMENT OF HEALTH CARE SERVICES "SPECIAL TERMS AND CONDITIONS"

(For federally funded service contracts or agreements and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Health Care Services", "California Department of Health Services", 'Department of Health Care Services", "Department of Health Services", "CDHCS", "DHCS", "CDHS", and "DHS" shall all have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount; agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

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1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the Department of Health Care Services)

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.

c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from DHCS under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Human Resources (CalHR), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the CalHR rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to CalHR rates may be approved by DHCS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from DHCS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to agreements in which equipment/property, commodities and/or supplies are furnished by DHCS or expenses for said items are reimbursed by DHCS with state or federal funds provided under the Agreement.)

a. **Equipment/Property definitions**

Wherever the term equipment and/or property is used, the following definitions shall apply:

(1) **Major equipment/property**: A tangible or intangible item having a base unit cost of **$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

(2) **Minor equipment/property**: A tangible item having a base unit cost of **less than $5,000** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement.

b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment/property and services related to such purchases for performance under this Agreement.

(1) Equipment/property purchases shall not exceed $50,000 annually.

To secure equipment/property above the annual maximum limit of $50,000, the Contractor shall make arrangements through the appropriate DHCS Program Contract Manager, to have all remaining equipment/property purchased through DHCS' Purchasing Unit. The cost of equipment/property purchased by or through DHCS shall be deducted from the funds available in this Agreement. Contractor shall submit to the DHCS Program Contract Manager a list of equipment/property specifications for those items that the State must procure. DHCS may pay the vendor directly for such arranged equipment/property purchases and title to the equipment/property will remain with DHCS. The equipment/property will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the DHCS Program Contract Manager, in writing, of an alternate delivery address.

(2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.

(3) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:

(a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.

(b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.

(c) Procurements shall be conducted in a manner that provides for all of the following:

[1] Avoid purchasing unnecessary or duplicate items.

[2] Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.

[3] Take positive steps to utilize small and veteran owned businesses.

d. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of $5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.

e. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.

f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.

g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.

h. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment/Property Ownership / Inventory / Disposition

(Applicable to agreements in which equipment/property is furnished by DHCS and/or when said items are purchased or reimbursed by DHCS with state or federal funds provided under the Agreement.)

a. Wherever the term equipment and/or property is used in Provision 4, the definitions in Paragraph a of Provision 3 shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement shall be considered state equipment and the property of DHCS.

(1) **Reporting of Equipment/Property Receipt -** DHCS requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by DHCS or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the DHCS Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by DHCS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with DHCS Funds) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager.

(2) **Annual Equipment/Property Inventory -** If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the DHCS Program Contract Manager using a form or format designated by DHCS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of DHCS-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager. Contractor shall:

(a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).

(b) Submit the inventory report to DHCS according to the instructions appearing on the inventory form or issued by the DHCS Program Contract Manager.

(c) Contact the DHCS Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by either the DHCS Program Contract Manager or DHCS' Asset Management Unit.

b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.

c. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.

d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.

(1) In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or

property. In the event of state equipment and/or miscellaneous property theft, Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the DHCS Program Contract Manager.

e. Unless otherwise stipulated by the Program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall only be used for performance of this Agreement or another DHCS agreement.

f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the DHCS Program Contract Manager and shall, at that time, query DHCS as to the requirements, including the manner and method, of returning state equipment and/or property to DHCS. Final disposition of equipment and/or property shall be at DHCS expense and according to DHCS instructions. Equipment and/or property disposition instructions shall be issued by DHCS immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, DHCS may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different DHCS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under this Agreement.)

(1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to DHCS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to DHCS.

(2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.

(3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.

(4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

(a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of $1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, to the Contractor and/or Subcontractor.

(b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the DHCS Program Contract Manager. The certificate of insurance shall identify the DHCS contract or agreement number for which the insurance applies.

(c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to DHCS.

(d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.

(e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

[1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Care Services).

[2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.

[3] The insurance carrier shall notify the California Department of Health Care Services (DHCS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.

(f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by DHCS, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.

(g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, DHCS may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing $5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding $5,000, the Contractor shall obtain at least three bids or justify a sole source award.

(1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.

(2) DHCS may identify the information needed to fulfill this requirement.

(3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:

(a) A local governmental entity or the federal government,

(b) A State college or State university from any State,

(c) A Joint Powers Authority,

(d) An auxiliary organization of a California State University or a California community college,

(e) A foundation organized to support the Board of Governors of the California Community Colleges,

(f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,

(g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations,

(h) Entities and/or service types identified as exempt from advertising and competitive bidding in State Contracting Manual Chapter 5 Section 5.80 Subsection B.2. View this publication at the following Internet address: https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting

b. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

(1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.

c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of $5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.

d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.

e. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.

f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.

g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.

h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(*Subcontractor Name*) agrees to maintain and preserve, until three years after termination of (*Agreement Number*) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

i. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.

j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to DHCS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHCS under this Agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of $10,000.)

a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.

b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.

c. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896.77)

d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.

   (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

   (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

e. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

f. The Contractor shall, if applicable, comply with the Single Audit Act and the audit requirements set forth in 2 C.F.R. § 200.501 (2014).

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the

authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.

c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

d. DHCS has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Termination

a. **For Cause**

The State may terminate this Agreement, in whole or in part, and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand. If this Agreement is terminated, in whole or in part, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials, related to the terminated portion of the Contract, including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The State shall pay contract price for completed deliverables delivered and accepted and items the State requires the Contractor to transfer as described in this paragraph above.

b. **For Convenience**

The State retains the option to terminate this Agreement, in whole or in part, without cause, at the State's convenience, without penalty, provided that written notice has been delivered to the Contractor at least ninety (90) calendar days prior to such termination date. In the event of termination, in whole or in part, under this paragraph, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials related to the terminated portion of the contract including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The Contractor will be entitled to compensation upon submission of an invoice and proper proof of claim for the services and products satisfactorily rendered, subject to all payment provisions of the Agreement. Payment is limited to expenses necessarily incurred pursuant to this Agreement up to the date of termination.

11. Intellectual Property Rights

a. Ownership

(1) Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

(2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

(3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of DHCS' Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of DHCS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHCS. **Except as otherwise set forth herein, neither the Contractor nor DHCS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to DHCS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHCS in the third-party's license agreement.

(4) Contractor agrees to cooperate with DHCS in establishing or maintaining DHCS' exclusive rights in the Intellectual Property, and in assuring DHCS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DHCS and which result directly or indirectly from this Agreement or any subcontract.

(5) Contractor further agrees to assist and cooperate with DHCS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DHCS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

(1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to DHCS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.

(2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of DHCS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

(1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DHCS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

(2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, shall include DHCS' notice of copyright, which shall read in 3mm or larger typeface: "© *[Enter Current Year e.g., 2010, etc.]*, California Department of Health Care Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Care Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to DHCS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to DHCS, without additional compensation, all its right, title and interest in and to such inventions and to assist DHCS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining DHCS' prior written approval; and (ii) granting to or obtaining for DHCS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-

party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and DHCS determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to DHCS.

f. Warranties

(1) Contractor represents and warrants that:

(a) It is free to enter into and fully perform this Agreement.

(b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.

(c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

(d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

(e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.

(f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to DHCS in this Agreement.

(g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

(h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

(2) DHCS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

(1) Contractor shall indemnify, defend and hold harmless DHCS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or

agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DHCS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. DHCS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DHCS.

(2) Should any Intellectual Property licensed by the Contractor to DHCS under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DHCS' right to use the licensed Intellectual Property in accordance with this Agreement at no expense to DHCS. DHCS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for DHCS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DHCS shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

(3) Contractor agrees that damages alone would be inadequate to compensate DHCS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DHCS would suffer irreparable harm in the event of such breach and agrees DHCS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, DHCS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

12. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of $100,000 must comply with the following provisions unless said agreement is exempt by law.

a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 7606) section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations.

b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Clean Water Act (33 U.S.C. 1251 et seq.), as amended.

13. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior DHCS approval of the location, costs, dates, agenda, instructors,

instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

14. Confidentiality of Information

a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.

b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.

c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.

d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

f. As deemed applicable by DHCS, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

15. Documents, Publications and Written Reports

(Applicable to agreements over $5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds $5,000.

16. Dispute Resolution Process

a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.

(1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing

to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.

(2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code Section 100171.

c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence shall be directed to the DHCS Program Contract Manager.

d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

17. Financial and Compliance Audit Requirements

a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.

b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code Section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code Section 38030).

c. The Contractor, as indicated below, agrees to obtain one of the following audits:

(1) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040)*** and receives **$25,000 or more** from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(2) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040)*** and receives **less than $25,000** per year from any State agency under a direct service contract or agreement, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(3) ***If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by 2 C.F.R. §§ 200.64, 200.70, and 200.90)*** and expends $750,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in 2 C.F.R. 200.501 entitled "Audit

Requirements". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:

(a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

(b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.

(4) If the Contractor submits to DHCS a report of an audit other than a 2 C.F.R. 200.501audit, the Contractor must also submit a certification indicating the Contractor has not expended $750,000 or more in federal funds for the year covered by the audit report.

d. Two copies of the audit report shall be delivered to the DHCS program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the DHCS Program Contract Manager shall forward the audit report to DHCS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.

e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The DHCS program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.

f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.

g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.

h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.

i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.

j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.

k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

18. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

19. Novation Requirements

If the Contractor proposes any novation agreement, DHCS shall act upon the proposal within 60 days after receipt of the written proposal. DHCS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHCS will initiate an amendment to this Agreement to formally implement the approved proposal.

20. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 2 CFR 180, 2 CFR 376

b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) violation of Federal or State antitrust statutes; ~~or~~ commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, obstruction of justice, or the commission of any other offense indicating a lack of business integrity or business honesty that seriously affects its business honesty;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and

(4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(5) Have not, within a three-year period preceding this application/proposal/agreement, engaged in any of the violations listed under 2 CFR Part 180, Subpart C as supplemented by 2 CFR Part 376.

(6) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.

(7) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHCS Program Contract Manager.

d. The terms and definitions herein have the meanings set out in 2 CFR Part 180 as supplemented by 2 CFR Part 376.

f. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this Agreement for cause or default.

21. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.

c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

22. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, DHCS shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

23. Payment Withholds

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, DHCS may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or $3,000 whichever is greater, until DHCS receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

24. Performance Evaluation

(Not applicable to grant agreements.)

DHCS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with DHCS. Negative performance evaluations may be considered by DHCS prior to making future contract awards.

25. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

26. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to DHCS or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

27. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

28. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

29. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

30. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.

b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.

c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.

d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

31. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.

b. As used herein, fringe benefits do not include:

(1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
(2) Director's and executive committee member's fees.
(3) Incentive awards and/or bonus incentive pay.
(4) Allowances for off-site pay.
(5) Location allowances.
(6) Hardship pay.
(7) Cost-of-living differentials

c. Specific allowable fringe benefits include:

(1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.

d. To be an allowable fringe benefit, the cost must meet the following criteria:

(1) Be necessary and reasonable for the performance of the Agreement.
(2) Be determined in accordance with generally accepted accounting principles.
(3) Be consistent with policies that apply uniformly to all activities of the Contractor.

e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

(1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.

(2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.

(3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

32. Suspension or Stop Work Notification

a. DHCS may, at any time, issue a notice to suspend performance or stop work under this Agreement. The initial notification may be a verbal or written directive issued by the funding Program's Contract Manager. Upon receipt of said notice, the Contractor is to suspend and/or stop all, or any part, of the work called for by this Agreement.

b. Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within 30 working days of the verbal notification. The suspension or stop work notification shall remain in effect until further written

notice is received from DHCS. The resumption of work (in whole or part) will be at DHCS' discretion and upon receipt of written confirmation.

(1) Upon receipt of a suspension or stop work notification, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.

(2) Within 90 days of the issuance of a suspension or stop work notification, DHCS shall either:

(a) Cancel, extend, or modify the suspension or stop work notification; or

(b) Terminate the Agreement as provided for in the Cancellation / Termination clause of the Agreement.

c. If a suspension or stop work notification issued under this clause is canceled or the period of suspension or any extension thereof is modified or expires, the Contractor may resume work only upon written concurrence of funding Program's Contract Manager.

d. If the suspension or stop work notification is cancelled and the Agreement resumes, changes to the services, deliverables, performance dates, and/or contract terms resulting from the suspension or stop work notification shall require an amendment to the Agreement.

e. If a suspension or stop work notification is not canceled and the Agreement is cancelled or terminated pursuant to the provision entitled Cancellation / Termination, DHCS shall allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.

f. DHCS shall not be liable to the Contractor for loss of profits because of any suspension or stop work notification issued under this clause.

33. Public Communications

"Electronic and printed documents developed and produced, for public communications shall follow the following requirements to comply with Section 508 of the Rehabilitation Act and the American with Disabilities Act:

A. Ensure visual-impaired, hearing-impaired and other special needs audiences are provided material information in formats that provide the most assistance in making informed choices."

34. Compliance with Statutes and Regulations

a. The Contractor shall comply with all California and federal law, regulations, and published guidelines, to the extent that these authorities contain requirements applicable to Contractor's performance under the Agreement.

b. These authorities include, but are not limited to, Title 2, Code of Federal Regulations (CFR) Part 200, subpart F, Appendix II; Title 42 CFR Part 431, subpart F; Title 42 CFR Part 433, subpart D; Title 42 CFR Part 434; Title 45 CFR Part 75, subpart D; and Title 45 CFR Part 95, subpart F. To the extent applicable under federal law, this Agreement shall incorporate the contractual provisions in these federal regulations and they shall supersede any conflicting provisions in this Agreement.

35. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of $100,000 per Section 1352 of Title 31, U.S.C.)

a. Certification and Disclosure Requirements

(1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of Title 31, U.S.C., and which exceeds $100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of

one page, entitled “Certification Regarding Lobbying”) that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.

(2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled “Standard Form-LLL ‘disclosure of Lobbying Activities’”) if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.

(3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;

(b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or

(c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.

(4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding $100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.

(5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHCS Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

Attachment 1
State of California
Department of Health Care Services

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, “Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of $100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Napa County Name of Contractor	 Printed Name of Person Signing for Contractor
240219B Contract / Grant Number	 Signature of Person Signing for Contractor
 Date	Chair of the Board of Supervisors Title

After execution by or on behalf of Contractor, please return to:

California Department of Health Care Services
Local Governmental Financing Division
County-Based Medi-Cal Administrative Activities Unit
1501 Capitol Avenue
P.O. Box 997436, MS 2628
Sacramento, CA 95899-7436

DHCS reserves the right to notifiy the contractor in writing of an alternate submission address.

Attachment 2

CERTIFICATION REGARDING LOBBYING

OMB Approved by

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 0348-0046
(See reverse for public burden disclosure)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
[ ] a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	[ ] a. bid/offer/application b. initial award c. post-award	[ ] a. initial filing b. material change For Material Change Only: Year _____ quarter _____ date of last report _____.

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ___, if known: Congressional District, If known:	Congressional District, If known:
6. Federal Department/Agency	7. Federal Program Name/Description: CDFA Number, if applicable: _____
8. Federal Action Number, if known:	9. Award Amount, if known: $
10.a. Name and Address of Lobbying Registrant *(If individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from 10a.* *(Last name, First name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person that fails to file the required disclosure shall be subject to a not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: Chair of the Board of Supervisors Telephone No.: Date:

Federal Use Only	Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriateclassification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if itis, or expects to be,a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection *of informa*tion. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

EXHIBIT E
CONTRACTOR'S PRIVACY AND SECURITY COMMITMENTS
(July 1, 2023 through June 30, 2024)

This Exhibit shall constitute the "Agreement" between **PUERTAS ABIERTAS COMMUNITY RESOURCE CENTER.** ("CONTRACTOR") and Napa County, and applies to the functions Contractor will perform on behalf of Napa County (collectively, "Services"), that are identified in the Master Agreement.

1. **Purpose.** This Agreement is intended to ensure that CONTRACTOR will establish and implement appropriate privacy and security safeguards with respect to Napa County Confidential Information. Napa County Confidential Information includes:

- Personally Identifiable Information: such as name, date of birth, address, phone number, Social Security Number, California Identification Number, Driver's License Number, email address, ip address, and any other data that could reasonably identify an individual; pertaining to clients or employees of Napa County; and
- Medical Information: any individually identifiable information, in electronic or physical form, pertaining to the past, present, or future medical condition of clients or employees of Napa County

2. **Permitted Uses and Disclosures.**

(a) Except as otherwise limited in this Agreement, CONTRACTOR may use or disclose Napa County Confidential Information to perform functions, activities, or services for, or on behalf of Napa County for the purposes specified in Attachment A to this Exhibit, which if completed and attached hereto is incorporated by reference, or as otherwise specified in the Master Agreement, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate California Civil Code Sections 56-56.37, collectively known as the Confidentiality of Medical Information Act (CMIA), and/or any other relevant state and federal privacy laws and regulations. CONTRACTOR must also make reasonable efforts to limit the use and disclosure of Napa County Confidential Information to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

(b) Except as otherwise limited in this Agreement, CONTRACTOR may use Napa County Confidential Information for the proper management and administration of the CONTRACTOR, or to carry out the legal responsibilities of CONTRACTOR.

(c) Except as otherwise limited in this Agreement, CONTRACTOR may disclose Napa County Confidential Information for the proper management and administration of the CONTRACTOR provided that disclosures are required by law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) CONTRACTOR may use Napa County Confidential Information to report violations of law to appropriate Federal and State authorities.

(e) CONTRACTOR may not use or disclose Napa County Confidential Information in a manner that would violate CMIA (or other relevant state and federal privacy laws and regulations) if done by Napa County, except for the specific uses and disclosures set forth herein.

3. **Appropriate Safeguards.**

(a) CONTRACTOR agrees to use appropriate safeguards to prevent the use or disclosure of

Napa County Confidential Information other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Napa County Confidential Information that is created, received, maintained, or transmitted on behalf of Napa County and limit its use and disclosure to the minimum necessary.

(b) Safeguarding Electronic Napa County Confidential Information. CONTRACTOR must secure all Electronic Napa County Confidential Information by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with the National Institute of Standards Technology (NIST) Standards and Federal Information Processing Standards (FIPS) as applicable. Should CONTRACTOR fail to comply with this provision, it agrees to hold harmless, defend at its own expense and indemnify Napa County in accordance with the terms of Section 6 of the Agreement, "Indemnification".

(c) Destruction of Napa County Confidential Information on paper, film, or other hard copy media must involve either shredding or otherwise destroying it so that it cannot be read or reconstructed.

(d) Should any employee or subcontractor of CONTRACTOR have direct, authorized access to computer systems of Napa County that contain Napa County Confidential Information, CONTRACTOR shall immediately notify Napa County of any change of such personnel (e.g., employee or subcontractor termination, or change in assignment where such access is no longer necessary) in order for Napa County to disable the previously authorized access.

4. **Reporting Unauthorized Uses and Disclosures.**

(a) CONTRACTOR agrees to notify Napa County of any access, use or disclosure of Napa County Confidential Information not permitted or provided for by the Agreement of which it becomes aware. Such notification will be made immediately after discovery by telephone call at (707) 253-4523, plus e-mail at Privacy.Officer@countyofnapa.org, and will include, to the extent possible, the identification of each Individual whose Napa County Confidential Information has been, or is reasonably believed by the CONTRACTOR to have been, accessed, acquired, used or disclosed, a description of the Napa County Confidential Information involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by CONTRACTOR.

(b) A breach or unauthorized access, use, or disclosure shall be treated as discovered by CONTRACTOR on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the CONTRACTOR or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent, or other representative of CONTRACTOR

(c) In meeting its obligations under this section, it is understood that CONTRACTOR is not acting as the Napa County's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Agreement, it is understood and agreed that CONTRACTOR is at all times acting as an independent contractor in providing services pursuant to this Agreement and the Master Agreement.

5. **Mitigating the Effect of a Breach, Security Incident, or Unauthorized Access, Use or Disclosure of Napa County Confidential Information**

(a) CONTRACTOR agrees to mitigate, to the greatest extent possible, any harm that results from the breach, security incident, or unauthorized access, use or disclosure of Napa County Confidential Information by CONTRACTOR or its employees, officers, subcontractors, agents, or other representatives.

(b) Following a breach, security incident, or any unauthorized access, use or disclosure of Napa County Confidential Information, CONTRACTOR agrees to take any and all corrective

action(s) necessary to prevent recurrence, to document any such action(s), and to make this documentation available to Napa County.

(c) Except as required by law, CONTRACTOR agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of Napa County Confidential Information without obtaining Napa County's prior written consent. Napa County hereby reserves the sole right to determine whether and how such notice is to be provided to any Individuals, regulatory agencies, or others as may be required by law, regulation, or contract terms, as well as the contents of such notice. When applicable law requires the breach be reported to a federal or state agency or that notice be given to media outlets, CONTRACTOR shall cooperate with and coordinate with Napa County to ensure such reporting is in compliance with applicable law and to prevent duplicate reporting, and to determine responsibilities for reporting.

6. **Indemnification.**

To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees or volunteers or other contractors or their subcontractors. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either Party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

7. **Individuals' Rights.**

(a) CONTRACTOR agrees to provide access, at the request of Napa County, and in the time and manner designated by the Napa County, to Napa County Confidential Information to Napa County or, as directed by Napa County, to an Individual.

8. **Agents and Subcontractors of CONTRACTOR.**

(a) CONTRACTOR agrees to enter into written agreements with any agent, subcontractor or vendor, to whom it provides Napa County Confidential Information received from Napa County or created, received , maintained or transmitted by CONTRACTOR on behalf of Napa County, that impose the same restrictions, conditions and requirements that apply through this Agreement to CONTRACTOR with respect to such information, including the requirement to immediately notify the CONTRACTOR of any instances of any breach, security incident, intrusion, or unauthorized access to or use or disclosure of Napa County Confidential Information of which it becomes aware. Upon request, CONTRACTOR shall provide copies of such agreements to Napa County.

(b) CONTRACTOR shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

9. **Audit, Inspection, and Enforcement.**

(a) CONTRACTOR agrees to make internal practices, books, and records relating to the use and disclosure of Napa County Confidential Information received from Napa County or created, received, maintained, or transmitted by CONTRACTOR on behalf of Napa County, available to any

state or federal agency, for the purposes of determining compliance with applicable state and federal privacy laws and regulations.

(b) With reasonable notice, Napa County and its authorized agents or contractors may audit and/or examine CONTRACTOR's facilities, systems, policies, procedures, and documentation relating to the security and privacy of Napa County Confidential Information to determine compliance with the terms of this Agreement. CONTRACTOR shall promptly correct any violation of this Agreement found by Napa County and shall certify in writing that the correction has been made. CONTRACTOR's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Napa County's enforcement rights under this Agreement.

10. **Permissible Requests by Napa County**. Napa County shall not request that CONTRACTOR use or disclose Protected Napa County Confidential Information in any manner that would not be permissible under the relevant state and federal privacy laws and regulations if done by Napa County.

11. **Term and Termination.**

(a) The terms of this Agreement shall remain in effect for the duration of all services provided by CONTRACTOR under the Master Agreement and for so long as CONTRACTOR remains in possession of any Napa County Confidential Information received from Napa County, or created, received, maintained or transmitted by CONTRACTOR on behalf of Napa County unless Napa County has agreed in accordance with this Section 11 that it is not feasible to return or destroy all Napa County Confidential Protected Information.

(b) Upon termination of the Master Agreement, CONTRACTOR shall recover any Napa County Confidential Information relating to the Master Agreement and this Agreement in its possession and in the possession of its subcontractors, agents, or representatives. CONTRACTOR shall return to Napa County, or destroy with the consent of Napa County, all such Napa County Confidential Information, in any form, in its possession and shall retain no copies.

(c) If CONTRACTOR believes it is not feasible to return or destroy the Napa County Confidential Information, CONTRACTOR shall so notify Napa County in writing. The notification shall include: (1) a statement that the CONTRACTOR has determined that it is not feasible to return or destroy the Napa County Confidential Information in its possession, and (2) the specific reasons for such determination. CONTRACTOR may retain only that Napa County Confidential Information which is necessary for CONTRACTOR to continue its proper management and administration or to carry out its legal responsibilities. If Napa County agrees in its sole discretion that CONTRACTOR cannot feasibly return or destroy the Napa County Confidential Information, CONTRACTOR shall ensure that any and all protections, requirements and restrictions contained in the Master Agreement and this Agreement shall be extended to any Napa County Confidential Information for so long as CONTRACTOR maintains such Napa County Confidential Information, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the Napa County Confidential Information infeasible.

(d) Napa County may immediately terminate the Master Agreement if it determines that CONTRACTOR has violated a material term of this Agreement.

(e) Survival. The obligations of CONTRACTOR under this Section 11 shall survive this Agreement.

12. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Napa County and CONTRACTOR to comply with the requirements of relevant state and federal privacy laws and regulations.

13. **Notices.**

(a) All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

(b) Any mailed notice, demand, request, consent, approval, or communication that Napa County desires to give to CONTRACTOR shall be addressed to CONTRACTOR at the mailing address set forth in the Master Agreement.

(c) Any mailed notice, demand, request, consent, approval, or communication that CONTRACTOR desires to give to Napa County shall be addressed to Napa County at the following address:

Napa County Privacy Officer
2751 Napa Valley Corporate Drive
Napa, CA 94558

(707) 253-4715

(d) For purposes of subparagraphs (b) and (c) above, either party may change its address by notifying the other party of the change of address.

14. **Lost Revenues; Penalties/Fines.**

(a) Penalties/Fines for Failure to Comply with relevant privacy laws and regulations. CONTRACTOR shall pay any penalty or fine assessed against Napa County arising from CONTRACTOR's failure to comply with the obligations imposed by relevant state and federal privacy laws and regulations.

(b) Penalties/Fines (other). CONTRACTOR shall pay any penalty or fine assessed against Napa County arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines, which may be assessed under a Federal or State False Claims Act provision.

NAPA COUNTY AGREEMENT NO. 240220B
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the 1st of July 2023, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and **PARENTS CHILD ADVOCACY NETWORK**, a California nonprofit corporation, whose mailing address is 1909 Jefferson Street, Napa, CA 94558, hereinafter referred to as "CONTRACTOR." COUNTY and CONTRACTOR may be referred to below collectively as "Parties" and individually as "Party."

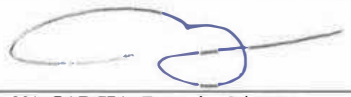
RECITALS

WHEREAS, COUNTY wishes to obtain specialized services in order for CONTRACTOR to provide assistance with outreach, enrollment, retention, and utilization of Medi-Cal for all potentially eligible children/families throughout Napa County; and CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

TERMS

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the Terms and Conditions and their own Exhibits, which together are attached hereto and incorporated by this reference as though set forth in full herein. The Section numbers of any portion of this Agreement may at times be referred to either as "Sections" or "Paragraphs" interchangeably.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto as of the date first above written.

NAPA COUNTY, a political subdivision of the State of California	**CONTRACTOR**
By _____ **JOELLE GALLAGHER, Chair of the Board of Supervisors** ATTEST: NEHA HOSKINS, Clerk of the Board By: _____ DATE APPROVED BY THE BOARD: _____ Processed by: _____ Deputy	 **MARLENA GARCIA**, Executive Director  **MATTHEW GUGGEMOS**, Board President

Maximum Amount of this Agreement: $25,009 Term Expires: June 30, 2024 Automatic renewal of term does not apply.	APPROVED AS TO FORM BY NAPA COUNTY COUNSEL By: *Jo Ann Iwasaki Parker, Deputy CC. By e-signature* Date: December 27, 2023

TERMS AND CONDITIONS OF NAPA COUNTY AGREEMENT NO. 240220B

SECTION 1. Contract Administration

For purposes of this Agreement, the following shall apply:

1.1 "Department" shall mean: Health and Human Services Agency

1.2 "Director" shall mean the person elected or appointed to the chief management position of the Department.

1.3 "Contract Administrator" shall be: Contracts Analyst or such other person as designated by the Department Director. The address for COUNTY's Contract Administrator shall be: 2751 Napa Valley Corporate Drive, Building B, 2nd Floor, Napa, CA 94559.

1.4 The Program Manager for COUNTY shall be: Christine Wu, M.D., Public Health Officer, 2751 Napa Valley Corporate Drive, Building B, 2nd Floor, Napa, CA 94559.

1.5 The Contract Contact Person for CONTRACTOR shall be: Marlena Garcia, 1909 Jefferson Street, Napa, CA 94558.

1.6 CONTRACTOR is a [ ] sole proprietor [ ] partnership [X] corporation [ ] public agency [ ] other (specify) .

1.7 The source of funding for this Agreement shall be: Health and Human Services Agency General Fund

1.8 In entering into this Agreement, CONTRACTOR acknowledges and agrees to abide by the applicable terms of the following COUNTY-entity agreements, and as they may amended from time to time: Napa County Agreement No. 230296B

These agreements are on file with the Napa County Clerk of the Board of Supervisors and may be accessed at **https://www.countyofnapa.org/DocumentCenter/** under "Departments/Health and Human Services/Administration/Contracts and Administration Documents" (See also Section 2, Paragraphs 2.15(b)(2) and 2.35)

SECTION 2. General Terms and Conditions.

Attached hereto and incorporated by this reference as Exhibit C is "SECTION 2. General Terms and Conditions – Version 12", which shall be referred to herein as the "General Terms and Conditions" and which shall apply to this Agreement unless otherwise specifically limited or excluded by more specific provisions.

Due to changes in the laws, future versions of General Terms and Conditions shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR, effective within such time period as is designated in Paragraph 2.10 (Other Termination) plus 15 days or as mandated by local, state or federal laws or regulations, whichever date is sooner.

SECTION 3. Specific Terms and Conditions.

The following Specific Terms and Conditions provide additional terms and conditions or modify the General Terms and Conditions of this Agreement. A Specific Term and Condition shall control if a

3. Performance Targets

CONTRACTOR will participate in at least twenty (20) outreach events.

CONTRACTOR will outreach to at least one thousand ninety-five (1195) individuals, providing information about Medi-Cal coverage and Medi-Cal covered services.

CONTRACTOR will refer and successfully link at least three hundred (300) individuals to Medi-Cal coverage and/or Medi-Cal covered services.

CONTRACTOR will facilitate at least twenty (20) Medi-Cal applications through to the point of submission for eligibility determinations and re-determinations to SSSD and/or CSOA of HHSA.

4. Quarterly Reporting

CONTRACTOR shall provide quarterly reports as indicated in the schedule included in Exhibit B, "COMPENSATION". Reports will include documentation to support the number and type of outreach events (e.g., flyers, brochures, dates, and announcements of events) and the number of individuals and/or families reached through ongoing outreach efforts. The reports will also include documentation to support the number of individuals and/or families assisted with application or re-determination for Medi-Cal (e.g., client count of applications) and the number of Medi-Cal beneficiaries linked to Medi-Cal services (e.g., client count). Finally, the reports will include certification that costs incurred were directly related to the provision of MAA allowable activities.

5. Compliance with MAA Requirements

CONTRACTOR shall comply with MAA requirements such as completing mandated covered contractor provisions and providing documentation that the organization is meeting requirements of the MAA claiming plan for which they are included such as submitting to HHSA the job descriptions for the staff performing MAA activities.

CONTRACTOR understands that the MAA activities and expenditures performed by CONTRACTOR are subject to the requirements set forth in the Department of Health Care Services (DHCS) County-Based MAA Program Operational Plan (approved July 1, 2017), which is incorporated herein by reference and can be found at the following link: https://www.dhcs.ca.gov/provgovpart/Documents/ACLSS/CMAA/CMAA-TCM_Imp_Plan/CMAA-TCM-Operational_Plan-2018.pdf.

CONTRACTOR shall comply with DHCS MAA Operational Plan requirements.

CONTRACTOR understands that the information presented to COUNTY by CONTRACTOR under this Agreement shall be used for filing a claim with the Federal Government for federal funds, and that any knowing misrepresentation constitutes a violation of the Federal False Claims Act.

EXHIBIT B
COMPENSATION
(July 1, 2023 through June 30, 2024)

MEDI-CAL ADMINISTRATIVE ACTIVITIES

COUNTY shall reimburse CONTRACTOR for Medi-Cal Administrative Activities (MAA) described in Exhibit A as follows:

1. **Amount**

CONTRACTOR shall be reimbursed up to a maximum of $25,009 for the term of the Agreement. Funding to the CONTRACTOR shall be contingent upon availability of funds for source of certified public expenditure. With the written approval of the Director of COUNTY's Health and Human Services Agency or designee, CONTRACTOR may modify the maximum amount of individual budget items in its final approved budget. The dollar amount of any individual budget item may be reduced without limitation, provided the total dollar amount for all budget items shall remain unchanged, such changes in the budget shall not add a new type of service to the program description, and the administrative cost line item shall remain unchanged. Such changes shall not be effective unless and until notice of consent by Health and Human Services Agency has been given to CONTRACTOR in writing.

- CONTRACTOR shall be reimbursed a maximum of $16,758 for Medi-Cal Outreach as described in Exhibit A.
- CONTRACTOR shall be reimbursed a maximum of $8,251 for Facilitating the Medi-Cal Application as described in Exhibit A.

CONTRACTOR shall be able to verify that expenditures related to its provision of MAA activities represent accurately identifiable and eligible costs, and that CONTRACTOR has excluded any non-claimable non-salary costs in compliance with the Department of Health Care Services (DHCS) County-Based MAA Program Operational Plan (approved July 1, 2017), which is incorporated herein by reference and can be found at the following link: https://www.dhcs.ca.gov/provgovpart/Documents/ACLSS/CMAA/CMAA-TCM_Imp_Plan/CMAA-TCM-Operational_Plan-2018.pdf

2. **Certified Public Expenditure**

This Renewal Agreement is funded by HHSA General funds and Mental Health Services Act funds that CONTRACTOR was awarded under Napa County Grant Agreement No. 230041B. CONTRACTOR may not use the funds received under the aforementioned agreements to claim reimbursement for any other Federal program.

ACTIVITY	**Contract #230041B**	**This Agreement (#2402230B)**
Medi-Cal Outreach	$23,584	$16,758
Medi-Cal Application Facilitation	$0	$8,251
TOTAL		**$25,009**

(c) Drug and Alcohol Policy.

(d) Napa County Information Technology Use and Security Policy. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

2.15 **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to or created by CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive or create, if any, in trust and confidence, except with the prior written approval of COUNTY, as expressed through the Department Director. Upon cancellation or expiration of this Agreement, to the extent permitted by law, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR agrees to adhere to the applicable terms regarding the privacy and security of Protected Information as set forth in the COUNTY-entity agreements identified in Paragraph 1.8 of Section 1 of this Agreement (Contract Administration). CONTRACTOR shall also observe and comply with those requirements set forth in "Addendum For Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(3) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 2.15.

(4) CONTRACTOR agrees to notify COUNTY, by and through the Napa County Privacy Officer at 2751 Napa Valley Corporate Dr. Suite B, Napa, CA 94559, or 707.253-4715, immediately in the following instances:

(A) Upon the discovery of a breach of PHI/PII/other Protected Information in electronic or other media;

(B) Upon the discovery that PHI/PII/other Protected Information was, or is reasonably believed to have been accessed or acquired by an unauthorized person;

(C) Upon the discovery of a suspected security incident that involves PHI/PII/other Protected Information; or

(D) Upon the discovery of any breach, security incident, intrusion, or unauthorized access, use, or disclosure of PHI/PII/other Protected Information.

(5) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of PHI/PII/other Protected Information, or its unauthorized access to or disclosure of PHI/PII/or other Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) To the extent CONTRACTOR creates, is provided, or has access to applications and records concerning any individual made or kept by COUNTY in connection with public social services (records) as defined in California Welfare & Institutions Code Section 10850, CONTRACTOR shall maintain the confidentiality of such records in accordance with Section 10850, except as otherwise permitted by COUNTY and as necessary for purposes of providing services under this Agreement.

(d) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

(e) HHSA Contractor Security Requirements. Whenever CONTRACTOR utilizes their own equipment to perform work under this Agreement , CONTRACTOR warrants that they have reviewed "HHSA Contractor Security Requirements" and can adhere to the minimum standards at all time. A copy of "HHSA Contractor Security Requirements" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

2.16 **No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Department Director.

2.26 **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

2.27 **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

2.28 **Entirety of Contract.** This Agreement, including documents incorporated by reference and not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

2.29. **Other Terms and Conditions [Reserved.]**

2.30 **Acknowledgment of Funds; Compliance with Government Code Section 7550.**

(a) **In General.** Because the monies provided by COUNTY are funded by taxpayer dollars, it is important that the public know the individuals and organizations that are receiving funds from COUNTY under this Agreement. Therefore, CONTRACTOR shall acknowledge funding received under this Agreement in statements or printed materials relating thereto. All printed materials shall contain the following information in a type size and style appropriate to the materials: "Made possible by funding provided by the County of Napa."

(b) **Compliance With Government Code Section 7550**. In addition, if the Scope of Work includes preparation of a document or written report and the total cost of the work is more than $5,000, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report as required by Government Code section 7550. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

2.31 **Compliance with Federal Health Care Program Requirements.** If CONTRACTOR will be performing services under this Agreement that are covered by a Federal Health Care Program, then:

(a) CONTRACTOR shall observe and comply with all applicable Federal Health Care Program Requirements, including but not limited to those requirements set forth in "Addendum For Contracts Involving Federal Health Care Programs—Revision of March 22, 2021." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and is online at:
www.countyofnapa.org.

(b) CONTRACTOR shall attend and/or provide Compliance Trainings as required by the Department Director unless otherwise deemed exempt by the Department Director or designee thereof.

(c) CONTRACTOR shall make COUNTY whole for any revenues lost arising from an act or omission in billing practices by CONTRACTOR.

(d) CONTRACTOR warrants that no one providing services is an Excluded Individual as such term is defined for Federal Health Care Programs.

(e) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contractors Involving Federal Health Care Programs". Said penalties and fines that may be assessed are as follows: civil monetary penalties of $11,000 per item or service; treble damages for the submission of claims for reimbursement from an excluded health care provider.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the Addenda in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR agrees to abide by COUNTY'S policies entitled "Whistleblower Protections", "The False Claims Act (Federal & State Statutes) & Other Administrative Remedies & Statutes", "Federal Anti-Kickback Prohibitions" and "Physicians Referrals – The Stark Law". The policies are on file with the Clerk of the Napa County Board of Supervisors and the Department and are also online at: www.countyofnapa.org.

(i) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.32 **Compliance with State Medi-Cal Specialty Mental Health Services Requirements.** If CONTRACTOR, under this Agreement, is required to and performs services that are covered by a State Medi-Cal Specialty Mental Health Services Program, then:

(a) CONTRACTOR shall observe and comply with all applicable State Medi-Cal Specialty Mental Health Services Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Medi-Cal Specialty Mental Health Services--Revision No. 1" for services performed on or after July 1, 2014. The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator, or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities".

(c) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the "Addendum for Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" in all such subcontracts as obligations of the subcontractor.

2.36 **Napa Health Matters Listing.** If CONTRACTOR is an organization providing health, human, or social services of a type recognized for listing on the "Napa Health Matters" website, CONTRACTOR agrees to maintain a current and accurate listing on www.NapaHealthMatters.org for such services.

2.37 **Licensure Status**.

(a) License in Good Standing. If CONTRACTOR is providing services under this Agreement as a state-licensed professional, CONTRACTOR shall ensure that CONTRACTOR's professional license is in good standing with all applicable licensing boards. CONTRACTOR understands COUNTY may terminate the Agreement if CONTRACTOR fails to maintain a current professional license in good standing. For purposes of this Agreement, "license in good standing" means there is no suspension, revocation or probation for any reason (including the failure to pay licensing fees), nor any restriction upon the provisions of the license: including, but not limited to, restrictions placed by a licensing agency upon CONTRACTOR's license pursuant to any consent or settlement agreement or to an administrative decision of the licensing agency.

(b) Expiration of License. In the event that CONTRACTOR's professional license is not renewed on or before its expiration, CONTRACTOR shall neither provide nor be reimbursed for services pursuant to this Agreement commencing the day after license expiration and until CONTRACTOR's professional license is renewed. For purposes of this Agreement, renewal date is the date the licensing board issues a renewed license, and it is irrelevant whether the licensing board subsequently recognizes any lapse in licensure.

2.38 **Code of Ethics**. CONTRACTOR understands that Napa County Health and Human Services (HHSA) has adopted a Code of Ethics. If the Department Director determines that the HHSA Code of Ethics applies to CONTRACTOR's activities under this Agreement, CONTRACTOR shall read, understand, and abide by the Code of Ethics, and CONTRACTOR shall on an annual basis provide written certification to HHSA that CONTRACTOR has received, read, understands, and will abide by HHSA's Code of Ethics. The Code of Ethics may be found online at **www.countyofnapa.org** or may be obtained from HHSA upon written request.

2.39 **Electronic Billing System**. CONTRACTOR understands that Napa County Health and Human Services (HHSA) operates an electronic billing system program, which seeks reimbursement from the State of California for the delivery of alcohol, drug abuse and mental health services. If CONTRACTOR provides any services related to alcohol, drug abuse or mental health services under the terms of CONTRACTOR's Agreement, CONTRACTOR agrees, upon request of the Director of HHSA or the Director's designee, to implement the COUNTY's sponsored electronic health record system as part of CONTRACTOR's requirement for the delivery of these services.

2.40 **Audit Report Requirements.** If COUNTY has determined that CONTRACTOR is a "subrecipient" (also known as a "pass-through entity") as defined in 2 C.F.R. § 200 et. seq., CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. § 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement. CONTRACTOR shall observe and comply with all applicable Audit Report Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Federal Awards." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

(g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations,

(h) Entities and/or service types identified as exempt from advertising and competitive bidding in State Contracting Manual Chapter 5 Section 5.80 Subsection B.2. View this publication at the following Internet address: https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting

b. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

(1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.

c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of $5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.

d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.

e. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.

f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.

g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.

h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(*Subcontractor Name*) agrees to maintain and preserve, until three years after termination of (*Agreement Number*) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

i. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.

j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

6. Income Restrictions

manner that would violate CMIA (or other relevant state and federal privacy laws and regulations) if done by Napa County, except for the specific uses and disclosures set forth herein.

3. **Appropriate Safeguards.**

(a) CONTRACTOR agrees to use appropriate safeguards to prevent the use or disclosure of Napa County Confidential Information other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Napa County Confidential Information that is created, received, maintained, or transmitted on behalf of Napa County and limit its use and disclosure to the minimum necessary.

(b) Safeguarding Electronic Napa County Confidential Information. CONTRACTOR must secure all Electronic Napa County Confidential Information by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with the National Institute of Standards Technology (NIST) Standards and Federal Information Processing Standards (FIPS) as applicable. Should CONTRACTOR fail to comply with this provision, it agrees to hold harmless, defend at its own expense and indemnify Napa County in accordance with the terms of Section 6 of the Agreement, "Indemnification".

(c) Destruction of Napa County Confidential Information on paper, film, or other hard copy media must involve either shredding or otherwise destroying it so that it cannot be read or reconstructed.

(d) Should any employee or subcontractor of CONTRACTOR have direct, authorized access to computer systems of Napa County that contain Napa County Confidential Information, CONTRACTOR shall immediately notify Napa County of any change of such personnel (e.g., employee or subcontractor termination, or change in assignment where such access is no longer necessary) in order for Napa County to disable the previously authorized access.

4. **Reporting Unauthorized Uses and Disclosures.**

(a) CONTRACTOR agrees to notify Napa County of any access, use or disclosure of Napa County Confidential Information not permitted or provided for by the Agreement of which it becomes aware. Such notification will be made immediately after discovery by telephone call at (707) 253-4523, plus e-mail at Privacy.Officer@countyofnapa.org, and will include, to the extent possible, the identification of each Individual whose Napa County Confidential Information has been, or is reasonably believed by the CONTRACTOR to have been, accessed, acquired, used or disclosed, a description of the Napa County Confidential Information involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by CONTRACTOR.

(b) A breach or unauthorized access, use, or disclosure shall be treated as discovered by CONTRACTOR on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the CONTRACTOR or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent, or other representative of CONTRACTOR

(c) In meeting its obligations under this section, it is understood that CONTRACTOR is not acting as the Napa County's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Agreement, it is understood and agreed that CONTRACTOR is at all times acting as an independent contractor in providing services pursuant to this Agreement and the Master Agreement.

NAPA COUNTY AGREEMENT NO. 240218B
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the 1st of July 2023, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and **UPVALLEY FAMILY CENTERS**, a California nonprofit corporation, whose mailing address is 1440 Spring Street, St. Helena, CA 94574, hereinafter referred to as "CONTRACTOR." COUNTY and CONTRACTOR may be referred to below collectively as "Parties" and individually as "Party."

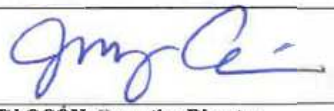
RECITALS

WHEREAS, COUNTY wishes to obtain specialized services in order for CONTRACTOR to provide assistance with outreach, enrollment, retention, and utilization of Medi-Cal for all potentially eligible children/families throughout Napa County; and CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein;

TERMS

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the Terms and Conditions and their own Exhibits, which together are attached hereto and incorporated by this reference as though set forth in full herein. The Section numbers of any portion of this Agreement may at times be referred to either as "Sections" or "Paragraphs" interchangeably.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto as of the date first above written.

NAPA COUNTY, a political subdivision of the State of California	**CONTRACTOR**
By _____ **JOELLE GALLAGHER, Chair of the Board of Supervisors** ATTEST: NEHA HOSKINS, Clerk of the Board By: _____ DATE APPROVED BY THE BOARD: _____ Processed by: _____ Deputy	 **JENNY OCON, Executive Director**

Maximum Amount of this Agreement: $14,144 Term Expires: June 30, 2024 Automatic renewal of term does not apply.	APPROVED AS TO FORM BY NAPA COUNTY COUNSEL By: *Jo Ann Iwasaki Parker, Deputy C.C., by e-signature* Date: 12/27/2023

TERMS AND CONDITIONS OF NAPA COUNTY AGREEMENT NO. 240218B

SECTION 1. Contract Administration

For purposes of this Agreement, the following shall apply:

1.1 "Department" shall mean: Health and Human Services Agency

1.2 "Director" shall mean the person elected or appointed to the chief management position of the Department.

1.3 "Contract Administrator" shall be: Contracts Analyst or such other person as designated by the Department Director. The address for COUNTY's Contract Administrator shall be: 2751 Napa Valley Corporate Drive, Building B, 2nd Floor, Napa, CA 94559.

1.4 The Program Manager for COUNTY shall be: Christine Wu, M.D., Public Health Officer, 2751 Napa Valley Corporate Drive, Building B, 2nd Floor, Napa, CA 94559.

1.5 The Contract Contact Person for CONTRACTOR shall be: Jenny Ocón, 1440 Spring Street, St. Helena, CA 94559.

1.6 CONTRACTOR is a [ ] sole proprietor [ ] partnership [X] corporation [ ] public agency [ ] other (specify) .

1.7 The source of funding for this Agreement shall be: Health and Human Services Agency (HHSA) General Fund, Mental Health Services Agreement (MHSA), and Master Services Agreement (MSA).

1.8 In entering into this Agreement, CONTRACTOR acknowledges and agrees to abide by the applicable terms of the following COUNTY-entity agreements, and as they may amended from time to time: Department of Health Care Services – Napa County Agreement No. 230296B

These agreements are on file with the Napa County Clerk of the Board of Supervisors and may be accessed at **https://www.countyofnapa.org/DocumentCenter/** under "Departments/Health and Human Services/Administration/Contracts and Administration Documents" (See also Section 2, Paragraphs 2.15(b)(2) and 2.35)

SECTION 2. General Terms and Conditions.

Attached hereto and incorporated by this reference as Exhibit C is "SECTION 2. General Terms and Conditions – Version 12", which shall be referred to herein as the "General Terms and Conditions" and which shall apply to this Agreement unless otherwise specifically limited or excluded by more specific provisions.

Due to changes in the laws, future versions of General Terms and Conditions shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR, effective within such time period as is designated in Paragraph 2.10 (Other Termination) plus 15 days or as mandated by local, state or federal laws or regulations, whichever date is sooner.

SECTION 3. Specific Terms and Conditions.

The following Specific Terms and Conditions provide additional terms and conditions or modify the General Terms and Conditions of this Agreement. A Specific Term and Condition shall control if a

conflict exists with a General Term and Condition.

3.1 The following Specific Terms and Conditions apply when CONTRACTOR's obligations under this Agreement involve the following as designated by an "X":

[X] (a) Contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (General Terms and Conditions Paragraph 2.8(b) applies).

[ ] (b) Construction or pre-construction related services (General Terms and Conditions Paragraph 2.19(e) applies).

[ ] (c) Work on or the supplying of any software systems or equipment containing or suspected of containing clocks or embedded chips functioning as or dependent upon the use of clocks or calendars (General Terms and Conditions Paragraph 2.29 applies).

[X] (d) Services covered by a Federal Health Care Program (General Terms and Conditions Paragraph 2.31 applies).

[ ] (e) Services covered by a State Medi-Cal Specialty Mental Health Program (General Terms and Conditions Paragraph 2.32 applies).

[ ] (f) Mental Health Activities (General Terms and Conditions Paragraph 2.33 applies).

[X] (g) Services involving the receipt, use or disclosure of protected health information: A determination has been made by COUNTY's Privacy Officer that CONTRACTOR shall not provide services under this Agreement as a Business Associate to COUNTY. General Terms and Conditions Paragraph 2.34(b) does not apply to this Agreement.

[ ] (h) Services provided under COUNTY's Managed Care Provider Program, which shall be subject to all the terms and conditions set forth in the Napa County Mental Health Managed Care Provider Manual, herein incorporated by reference and on file with the Clerk of the Napa County Board of Supervisors.

[ ] (i) Services as a provider for which CONTRACTOR has submitted a "Provider Application," which CONTRACTOR warrants that the information contained in said application is accurate and understands that any inaccuracies may be grounds for termination of this Agreement by COUNTY. CONTRACTOR authorizes COUNTY to consult with third parties, including but not limited, to the National Practitioner Data Bank or other applicable licensing boards.

[ ] (j) Services involving the use or disclosure of personally identifiable information that are performed as a subcontractor under COUNTY's contract with another entity when that contract requires COUNTY to include its applicable terms in COUNTY's subcontracts. (General Terms and Conditions Paragraph 2.35 applies.)

[ ] (k) Services determined by the Department Director to be covered by Department's Code of Ethics. (General Terms and Conditions Paragraph 2.38 applies.) CONTRACTOR understands that, by entering into this Agreement, CONTRACTOR acknowledges that CONTRACTOR has received, read, and understands the Code of Ethics, and agrees to abide by the terms therein as applicable to CONTRACTOR's activities under this Agreement. Department shall provide CONTRACTOR with copies of Department's Code of Ethics prior to the execution of the Agreement. CONTRACTOR further understands that on an annual basis CONTRACTOR shall provide written certification to Department that CONTRACTOR has received, read, understands, and will abide by Department's Code of Ethics.

[X] (l) Services have been determined by the Department Director, or may be determined at a later date, that CONTRACTOR is a subrecipient or pass-through entity and is therefore required to meet all of the requirements found in 2 C.F.R. § 200.331. (General Terms and Conditions 2.40

applies.) COUNTY shall notify CONTRACTOR in accordance with General Terms and Conditions Paragraph 2.13 (Notices), of any change in designation as a subrecipient, and any subsequent increase to the amount of Federal funding CONTRACTOR shall receive under the terms of this Agreement. CONTRACTOR shall be bound thereby upon receipt of notice.

3.2 Source Funding.

(a) Change in Source Funding. Paragraph 1.7 may be unilaterally modified by COUNTY upon written notice to CONTRACTOR who shall be bound thereby immediately upon receipt. The Department Director is delegated the authority to modify Paragraph 1.7 and provide such written notice, but may exercise such authority only after consultation with, and concurrence of, the Napa County Counsel and the Napa County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Napa County Board of Supervisors to modify Paragraph 1.7.

(b) Amendment to Source Funding Agreement. If Paragraph 1.7 identifies a funding source agreement, then any amendment to the funding source agreement shall be automatically incorporated and made a part of this Agreement, effective in accordance with the amended funding source agreement. As a subcontractor of COUNTY, CONTRACTOR shall be bound by the applicable terms of the funding source agreement, and any amendments thereto.

3.3 Statement of Economic Interests. By authorizing its Chair to execute this Agreement on its behalf, COUNTY's Board of Supervisors hereby determines in writing on behalf of COUNTY that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with the disclosure obligations set forth in Paragraph 2.23(b).

3.4 Term of Agreement. Section 2.1 (b) of the General Terms and Conditions does not apply to this Agreement. The term of this Agreement shall commence on the date written on page 1 and shall expire as of **June 30, 2024**, unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Termination for Convenience) or 2.23 (a) (Covenant of No Undisclosed Conflict). The obligations of the Parties under Paragraphs 2.7 (Insurance) and 2.8 (Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes) and 2.21 (Access to Records/Retention).

3.5 COUNTY delegates its authority to the Director of the Health and Human Services Agency to approve future amendments to Exhibits A and B, attached to this Agreement, provided that any such amendment does not materially alter the nature of the services to be provided or increase the maximum compensation available under this Agreement.

SECTION 4. Incorporated Documents.

The following documents are incorporated herein by this reference and attached hereto and labeled as the following Exhibit letters:

Exhibit A: Scope of Work
Exhibit B: Compensation
Exhibit C: "Section 2, General Terms and Conditions, Version 12"
Exhibit D(F): Department of Health Care Services "Special Terms and Conditions"
Exhibit E: Contractor's Privacy and Security Commitments

EXHIBIT A
SCOPE OF WORK
(July 1, 2023 through June 30, 2024)

MEDI-CAL ADMINISTRATIVE ACTIVITIES

Medi-Cal Administrative Activities (MAA) are activities performed that are necessary for the proper and efficient administration of the Medi-Cal State Plan. The Local Government Agency (LGA), or the designated entity responsible for administering MAA locally, is Napa County's Health and Human Services Agency (HHSA). The LGA may subcontract with community-based organizations (CBOs) to perform MAA.

In FY 13-14, HHSA launched a community-wide effort to outreach and enroll uninsured and potentially eligible residents in Medi-Cal coverage and to link them to needed health/behavioral health services. The essential component of this effort is subcontracting with qualified and interested CBOs to link Medi-Cal eligible and potentially eligible individuals with Medi-Cal covered services as well assist in the Medi-Cal application process. Currently, many CBOs are the first-place low-income individuals and families go for services including: Medi-Cal and Medi-Cal covered service information, referral, and facilitation of the Medi-Cal application. Napa County recognizes the unique relationship that CBOs have with the Medi-Cal eligible population and wishes to maximize this relationship in assuring the availability and accessibility of Medi-Cal services.

Eligibility for Medi-Cal was expanded under the Affordable Care Act and more residents are eligible for Medi-Cal. This project intends to have a positive, proactive impact in reaching the uninsured by leveraging the effectiveness that CBOs have in linking people to the appropriate services within the county. The project also intends to ensure there is a greater chance that anyone who needs health/behavioral health care successfully connects and engages in those services.

As a participant in this project, CONTRACTOR is expected to carry out the duties specified below to ensure to the greatest extent practicable that: Uninsured Napa residents who are eligible for Medi-Cal coverage receive it and access the care they need.

Type of MAA Activities to be performed:

1. **Allowable Medi-Cal Outreach**

   This activity may consist of discrete campaigns or may be an ongoing activity. This activity is directed to groups or individuals targeted to two goals:

   - Bringing potentially eligible people into the Medi-Cal system for the purpose of determining Medi-Cal eligibility; and
   - Bringing Medi-Cal eligible people into Medi-Cal services. Outreach may consist of discrete campaigns or may be an ongoing activity, such as: sending teams of employees into the community to contact homeless alcoholics or drug abusers; establishing a telephone or walk-in service for referring persons to Medi-Cal services or eligibility offices; operating a drop-in community center for underserved populations, such as minority teenagers where Medi-Cal eligibility and service information is disseminated.

The following activities describe how outreach shall be performed:

a. Outreach campaigns directed to the entire population to encourage potential Medi-Cal eligibles to apply for Medi-Cal. These campaigns are Medi-Cal only eligibility outreach campaigns.

b. Outreach campaigns directed toward bringing Medi-Cal eligibles into Medi-Cal covered services. In such campaigns, the language should clearly indicate that the message is directed to only persons eligible for Medi-Cal, and not the general public. These campaigns are service campaigns, targeted to specific Medi-Cal services, such as Early and Periodic Screening, Diagnosis and Treatment (EPSDT).

c. Informing children and their families on how to effectively access, use and maintain participation in all health resources under the Medi-Cal program.

d. Informing individuals or the general public about the benefits and services that the Medi-Cal program offers and encouraging and referring them to apply for Medi-Cal benefits.

e. Providing initial referral assistance to families and individuals to Medi-Cal services.

Note: A health education program or campaign may be allowable as a Medi-Cal administrative cost if it is targeted specifically to Medi-Cal services and for Medi-Cal eligible individuals, such as an educational campaign on immunization addressed to parents of Medi-Cal children.

2. **Facilitating Medi-Cal Application (Eligibility Intake and Renewal):** Activities are those that facilitate the completion of the Medi-Cal application and renewal process and ensuring linkage with HHSA's Self Sufficiency Services Division (SSSD) for eligibility determinations. They include:

a. Explain Medi-Cal eligibility rules and the Medi-Cal eligibility process to prospective applicants; assist an applicant to fill out a Medi-Cal eligibility application; gather information related to the application and eligibility determination from a client, including resource information and third party liability information, as a prelude to submitting a formal Medi-Cal application to SSSD; and/or provide necessary forms and packaging all forms in preparation for the Medi-Cal eligibility determination.

b. Assist the beneficiary in completing necessary application for redetermination, gather information related to the application and assist in submitting the application to HHSA's SSSD and/or Comprehensive Services for Older Adults (CSOA) Divisions.

c. These activities do not include the eligibility determination or redetermination itself.

3. **Performance Targets**

CONTRACTOR will participate in at least ten (10) outreach events.

CONTRACTOR will outreach to at least one thousand (1000) individuals, providing information about Medi-Cal coverage and Medi-Cal covered services.

CONTRACTOR will refer and successfully link at least three hundred (300) individuals to Medi-Cal coverage and/or Medi-Cal covered services.

CONTRACTOR will facilitate at least two hundred (200) Medi-Cal applications through to the point of submission for eligibility determinations and re-determinations SSSD.

4. **Quarterly Reporting**

CONTRACTOR shall provide quarterly reports as indicated in the schedule included in Exhibit B, "COMPENSATION". Reports will include documentation to support the number and type of outreach events (e.g., flyers, brochures, dates, and announcements of events) and the number of individuals and/or families reached through ongoing outreach efforts. The reports will also include documentation to support the number of individuals and/or families assisted with application or re-determination for Medi-Cal (e.g., client count of applications) and the number of Medi-Cal beneficiaries linked to Medi-Cal services (e.g., client count). Finally, the reports will include certification that costs incurred were directly related to the provision of MAA allowable activities.

5. **Compliance with MAA Requirements**

CONTRACTOR shall comply with MAA requirements such as completing mandated covered contractor provisions and providing documentation that the organization is meeting requirements of the MAA claiming plan for which they are included such as submitting to HHSA the job descriptions for the staff performing MAA activities.

CONTRACTOR understands that the MAA activities and expenditures performed by CONTRACTOR are subject to the requirements set forth in the Department of Health Care Services (DHCS) County-Based MAA Program Operational Plan (approved July 1, 2017), which is incorporated herein by reference and can be found at the following link: https://www.dhcs.ca.gov/provgovpart/Documents/ACLSS/CMAA/CMAA-TCM_Imp_Plan/CMAA-TCM-Operational_Plan-2018.pdf.

CONTRACTOR shall comply with DHCS requirements of MAA Operational Plan.

CONTRACTOR understands that the information presented to COUNTY by CONTRACTOR under this Agreement shall be used for filing a claim with the Federal Government for federal funds, and that any knowing misrepresentation constitutes a violation of the Federal False Claims Act.

EXHIBIT B
COMPENSATION
(July 1, 2023 through June 30, 2024)

MEDI-CAL ADMINISTRATIVE ACTIVITIES

COUNTY shall reimburse CONTRACTOR for Medi-Cal Administrative Activities (MAA) described in Exhibit A as follows:

1. **Amount**

CONTRACTOR shall be reimbursed up to a maximum of $14,144.00 for Medi-Cal Outreach as described in Exhibit A for the term of the Agreement. Funding to the CONTRACTOR shall be contingent upon availability of funds for source of certified public expenditure. With the written approval of the Director of COUNTY's Health and Human Services Agency or designee, CONTRACTOR may modify the maximum amount of individual budget items in its final approved budget. The dollar amount of any individual budget item may be reduced without limitation, provided the total dollar amount for all budget items shall remain unchanged, such changes in the budget shall not add a new type of service to the program description, and the administrative cost line item shall remain unchanged. Such changes shall not be effective unless and until notice of consent by Health and Human Services Agency has been given to CONTRACTOR in writing.

- CONTRACTOR shall be reimbursed a maximum of $9,823.00 for Medi-Cal Outreach as described in Exhibit A.
- CONTRACTOR shall be reimbursed a maximum of $4,321.00 for Facilitating the Medi-Cal Application as described in Exhibit A.

CONTRACTOR shall be able to verify that expenditures related to its provision of MAA activities represent accurately identifiable and eligible costs, and that CONTRACTOR has excluded any non-claimable non-salary costs in compliance with the Department of Health Care Services (DHCS) County-Based MAA Program Operational Plan (approved July 1, 2017), which is incorporated herein by reference and can be found at the following link: https://www.dhcs.ca.gov/provgovpart/Documents/ACLSS/CMAA/CMAA-TCM_Imp_Plan/CMAA-TCM-Operational_Plan-2018.pdf

2. **Certified Public Expenditure**

This Agreement is funded by County General funds, Tobacco Master Settlement Agreement (MSA) funds that CONTRACTOR was awarded under Napa County Grant Agreement No. 230078B and No. 240037B, and Mental Health Services Act (MHSA) funds that CONTRACTOR was awarded under Napa County Grant Agreement No.210362B and No. 230355B. Services are also funded by an agreement with Local Public Entity, the City of Calistoga. The expenditure of these funds shall be certified by the City of Calistoga on a quarterly basis and submitted to the COUNTY with quarterly invoices. CONTRACTOR may not use the funds received under the aforementioned Agreements to claim reimbursement for any other Federal program.

ACTIVITY	Contract #230078B	Contract #240037B	Contract #210362B	Contract #230355B	Agreement with the City of Calistoga	This Agreement (#240218B)
Medi-Cal Outreach	$2,903	$3,796	$582	$1,734	$4,808	$9,823
Medi-Cal Application Facilitation	$0	$0	$0	$0	$1,004	$4,321
TOTAL						**$14,144**

3. **Method of Payment**

CONTRACTOR must submit an invoice or claim form to the County Fiscal Analyst, not to exceed the contract maximum. Actual annual reimbursement shall be based on CONTRACTOR's actual cost, not to exceed the annual maximum operating budget amount in each Fiscal Year. The quarterly reports and invoices due, as noted below, shall identify the activities conducted and expenditures made during the previous quarter ending on the last date of the calendar month prior to the report due date. Payment will be made following receipt of the report and invoice. COUNTY shall not release payments until CONTRACTOR has submitted reports for the previous quarter.

CONTRACT PERIOD	REPORT/INVOICE DUE DATE
July 1, 2023 – September 30, 2023	Upon Contract Execution
October 1, 2023 – December 31, 2023	January 31, 2024
January 1, 2024– March 31, 2024	April 30, 2024
April 1, 2024– June 30, 2024	July 15, 2024

CONTRACTOR shall, on each quarterly invoice, certify that the expenditures incurred represent accurate identifiable and eligible costs, and that CONTRACTOR's expenditures were made on eligible MAA claimable activities, as set forth in Exhibit A of this Agreement. CONTRACTOR's expenditures incurred for each of the two MAA activities shall be separately identified. CONTRACTOR shall provide certification in a manner, and on an invoice, provided by COUNTY.

4. **Contract Monitoring**

COUNTY will meet with CONTRACTOR during the initial months/quarters of this agreement to review documentation that supports MAA invoicing and to provide technical assistance as needed. CONTRACTOR shall meet at least once a year with COUNTY thereafter to coordinate and review fulfillments of contract terms and address any potential impediments to the fulfillment of the terms of this agreement. Such review shall extend to an

examination of type and quantity of services provided, interagency coordination, and any other issues pertinent to this agreement.

- CONTRACTOR is responsible for maintaining all documentation required for monitoring.
- CONTRACTOR shall request technical assistance from the COUNTY regarding elements of the contract with which they need assistance. COUNTY shall consider any such request and shall provide technical assistance to the CONTRACTOR if the COUNTY has the capacity and capability to do so. CONTRACTOR maintains responsibility for ensuring that its services and activities are in compliance with applicable regulations.
- COUNTY normally shall provide thirty (30) day notice of the site visit to the CONTRACTOR and shall specify the documentation that will need to be available at the time of the visit.
- Under normal circumstances, the visit may require the review of the following documents: records that delineate the MAA activities from other activities, support full expenditure of funding and that expenditures were directly related to MAA activities, demonstrate covered contractor screening provisions have been met, and any other documentation the COUNTY may request to be reviewed to ensure CONTRACTOR meeting state and federal requirements delegated through the contract.
- COUNTY shall provide CONTRACTOR with the opportunity to respond to the COUNTY'S written report of the site visit prior to the report becoming final.
- If the final report identifies material variations between the CONTRACTOR'S activities and the requirements of the contract, the COUNTY may require the CONTRACTOR to prepare a written plan of action to address those variations.

5. **Program Name and Number for Federal Claiming**

Title 31- Money and Finance, Subtitle V – General Assistance Administration, Chapter 75 - Requirements for Single Audits, Section 7502 requires each pass-through entity provide the sub recipient program names and any identifying numbers from which such assistance is derived. The Catalog of Federal Domestic Assistance (CFDA) number for this federal program is 93.778, Medical Assistance Program.

6. **Disallowed Costs**

COUNTY shall withhold any payments for services for which documentation of activities and expenditures is not sufficient to claim the Federal Financial share of MAA.

CONTRACTOR shall reimburse COUNTY for all overpayments identified by CONTRACTOR, COUNTY and/or State or Federal oversight agencies as an audit exception. CONTRACTOR shall make any repayment based on audit exception(s) upon discovery of said exception(s). If reimbursement is required, CONTRACTOR shall reimburse COUNTY within sixty (60) days of identification.

EXHIBIT C

SECTION 2. GENERAL TERMS AND CONDITIONS --VERSION 12

2.1 **Term of the Agreement.**

(a) Term. The term of this Agreement shall commence on the date first written on page 1 and shall expire on the expiration date set forth on page 1 unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Other Termination) or 2.23(a) (Covenant of No Undisclosed Conflict).

(b) Automatic Renewal. The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the same terms and conditions, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30. COUNTY authorizes the Department Director to determine whether this Agreement shall not be renewed and to provide the written notice of the intention to not renew on behalf of COUNTY.

(c) Obligations Extending Beyond Term. The obligations of the parties under Paragraphs 2.7 (Insurance) and 2.8 (Hold Harmless/Defense/Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes), 2.21 (Access to Records/Retention), 2.31 (Compliance with Federal Health Care Program Requirements, 2.32 (Compliance with State Medi-Cal Specialty Mental Health Services Requirements), and 2.33 (Compliance with Mental Health Activities Requirements). To the extent the paragraphs referenced in this Paragraph 2.1 may be modified by Specific Terms and Conditions contained in SECTION 3 of this Agreement, the modifications shall also continue after the expiration date or early termination.

2.2 **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A."

2.3 **Compensation.**

(a) Compensation/Maximum. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates and/or in the amount(s) set forth in Exhibit "B". The maximum payment for the initial term of this Agreement, and the successive maximum payments for each subsequent automatically renewed term, shall each be that maximum amount set forth on page 1; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

(b) Advance Funding.

1. Use of Funds. To the extent this Agreement may permit advance funding of services and expenses, use of funds delineated in this Agreement is limited to the term of performance unless otherwise modified in accordance with Paragraph 2.17 (Amendment/Modification). COUNTY may at its discretion recapture funds obligated under the authority of this Agreement if expenditure plans are not being met.

2. Reversion of Funds. If funds awarded to CONTRACTOR have not been expended in accordance with this Agreement and COUNTY has determined after consultation with CONTRACTOR that funds will not be spent in a timely manner, such funds will revert to COUNTY

for that reason and to the extent permitted by and in a manner consistent with federal and state law, regulations, and policies.

(c) Availability of Funds. It is mutually understood that, for the benefit of both parties, this Agreement may have been written before ascertaining the availability of congressional and/or state legislative appropriation of funds in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made. If funding of this Agreement is dependent upon the availability of congressional and legislative appropriation of funds, then:

1. This Agreement shall be deemed automatically terminated if the Congress and and/or the State Legislature do not appropriate funds needed for this Agreement;

2. At COUNTY's discretion, this Agreement may be deemed automatically terminated or this Agreement may be modified or amended in accordance with Paragraph 2.17 (Amendment/Modifications), if the Congress and/or State Legislature do not appropriate sufficient funds needed for this Agreement; and

3. This Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or State Legislature, or any statute enacted by the Congress or State Legislature, that may in any manner affect the provisions, terms, or funding of this Agreement.

(d) COUNTY may withhold any compensation due CONTRACTOR as an offset for any revenues lost arising from an act or omission in billing or documentation practices by CONTRACTOR. CONTRACTOR shall make COUNTY whole for any such lost revenues.

2.4 **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Where expense reimbursement is sought, the invoice shall describe the nature and cost of the expense, the task(s) if any to which the expense was related, and the date incurred. CONTRACTOR shall submit invoices not more often than monthly to the Contract Administrator. After review and approval as to form and content, the invoice shall be submitted to the Napa County Auditor no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Contract Administrator upon request during the term of this Agreement in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

2.5 **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the

compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

2.6 **Specific Performance.** It is agreed that CONTRACTOR, including the agents, employees and authorized subcontractors of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

2.7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 2.7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager,

which shall be filed by CONTRACTOR with the Health and Human Services Agency prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 2.7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 2.7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 2.7.

(f) 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, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

2.8 **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees or volunteers or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Obligations Relating to Criminal Background Checks.

1. If CONTRACTOR's obligations under this Agreement involve contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (hereafter in this paragraph referred to as "third persons"), then CONTRACTOR shall investigate by all lawful means, including but not limited to obtaining information from official government sources as the result of taking fingerprints, the criminal background of each and all of its officers, agents, employees, interns, and volunteers, however denominated (hereafter, "employees"), who will have direct personal contact with, or provide direct personal services to, third persons in the performance of this contract. Depending upon the information acquired by its investigation, CONTRACTOR shall not allow any of its employees to have personal contact with, or provide direct personal services to, third persons where it may reasonably be concluded as a result of its investigation that an employee should not have such contact or provide such service. Nothing herein requires CONTRACTOR to investigate the criminal background of an employee who is currently licensed by the State of California and whose license requires a criminal background investigation.

2. Notwithstanding anything to the contrary in (a) or (c), CONTRACTOR shall defend and indemnify COUNTY and its officers, agents and employees from any and all claims, actions, settlements or judgments of whatever kind which may arise from the failure of CONTRACTOR to conduct the criminal background investigation described in this subparagraph (b) or from the failure of CONTRACTOR after the investigation to reasonably disallow an employee from having such personal contact or providing such direct personal service.

(c) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

2.9 **Termination for Cause.**

(a) If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days written notice to the defaulting party in the manner set forth in Paragraph 2.13 (Notices).

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

2.10 **Other Termination.**

(a) This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty
(30)
days prior to the effective date; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination.

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

2.11. **Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement, if and to the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(b) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof.

(c) Notwithstanding the provisions set forth in subparagraph (b) above, if the services involve development or improvement of previously patented inventions or previously copyrighted software, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(d) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

2.12 **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

2.13 **Notices.**

(a) In General. Except as set forth in subparagraph (b) below with respect to notice of automatically adopted provisions, all notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this subparagraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier. Any mailed notice, demand, request, consent, approval or communication that COUNTY desires to give to CONTRACTOR shall be addressed to CONTRACTOR's Contract Contact Person at the mailing address set forth in SECTION 1 of this Agreement. Any mailed notice, demand, request, consent, approval or communication that CONTRACTOR desires to give to COUNTY shall be addressed to COUNTY's Contract Administrator at the mailing address set forth in SECTION 1 of this Agreement. Either party may change its address by notifying the other party of the change of address.

(b) Provisions Adopted Automatically. COUNTY reserves the right to provide notice to CONTRACTOR via facsimile of terms, which automatically become part of this Agreement upon approval by the Napa County Board of Supervisors. Notice delivered by facsimile shall be deemed to have been received on the date a successful delivery confirmation report is generated.

(c) Waiver of Notice by CONTRACTOR. If receipt of notice is refused by CONTRACTOR or if notice is undeliverable due to CONTRACTOR's failure to provide a change of address, notice shall be deemed waived and COUNTY may proceed as though notice were accomplished.

2.14 **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. Future versions of the following policies shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR pursuant to Paragraph 2.13. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment."

(c) Drug and Alcohol Policy.

(d) Napa County Information Technology Use and Security Policy. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

2.15 **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to or created by CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive or create, if any, in trust and confidence, except with the prior written approval of COUNTY, as expressed through the Department Director. Upon cancellation or expiration of this Agreement, to the extent permitted by law, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR agrees to adhere to the applicable terms regarding the privacy and security of Protected Information as set forth in the COUNTY-entity agreements identified in Paragraph 1.8 of Section 1 of this Agreement (Contract Administration). CONTRACTOR shall also observe and comply with those requirements set forth in "Addendum For Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(3) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 2.15.

(4) CONTRACTOR agrees to notify COUNTY, by and through the Napa County Privacy Officer at 2751 Napa Valley Corporate Dr. Suite B, Napa, CA 94559, or 707.253-4715, immediately in the following instances:

(A) Upon the discovery of a breach of PHI/PII/other Protected Information in electronic or other media;

(B) Upon the discovery that PHI/PII/other Protected Information was, or is reasonably believed to have been accessed or acquired by an unauthorized person;

(C) Upon the discovery of a suspected security incident that involves PHI/PII/other Protected Information; or

(D) Upon the discovery of any breach, security incident, intrusion, or unauthorized access, use, or disclosure of PHI/PII/other Protected Information.

(5) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of PHI/PII/other Protected Information, or its unauthorized access to or disclosure of PHI/PII/or other Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) To the extent CONTRACTOR creates, is provided, or has access to applications and records concerning any individual made or kept by COUNTY in connection with public social services (records) as defined in California Welfare & Institutions Code Section 10850, CONTRACTOR shall maintain the confidentiality of such records in accordance with Section 10850, except as otherwise permitted by COUNTY and as necessary for purposes of providing services under this Agreement.

(d) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

(e) HHSA Contractor Security Requirements. Whenever CONTRACTOR utilizes their own equipment to perform work under this Agreement , CONTRACTOR warrants that they have reviewed "HHSA Contractor Security Requirements" and can adhere to the minimum standards at all time. A copy of "HHSA Contractor Security Requirements" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

2.16 **No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Department Director.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

2.17 **Amendment/Modification.**

(a) Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only COUNTY, by the Department Director (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed $10,000), or by COUNTY's Purchasing Agent (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed the maximum aggregate amount for Purchasing Agent contracts as specified by Napa County Code section 2.36.040 (G)) or by COUNTY's Board of Supervisors (in all other instances), in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by "Exhibit A." Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

(b) Notwithstanding anything to the contrary in (a), this Agreement may be unilaterally modified by COUNTY upon written notice to CONTRACTOR under the following circumstances:

1. There is a decrease in state or federal funding needed for this Agreement;
2. There is a no-cost extension of the end date of the Agreement as authorized by a state or federal funding source; or
3. There is a change in state/federal law or regulation requiring a change in a provision of this Agreement.

(c) The Department Director is delegated the authority to modify this Agreement in accordance with subparagraph (b), but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to modify this Agreement under subparagraph (b).

2.18 **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

2.19 **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. **CONTRACTOR acknowledges its**

independent duty to be and to remain informed of all changes in such laws without reliance on COUNTY to provide notice of such changes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS, use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Federal Grant Source. Notwithstanding anything to the contrary in this Agreement, if the funds for this Agreement are derived from a grant from a federal agency, pursuant to 29 CFR 97.36(i)(8) and (9), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the federal granting agency with respect to any discovery or invention which arises or is developed pursuant to this Agreement, and pertaining to any copyrights or rights in data created or otherwise developed when engaging in activities of CONTRACTOR under this Agreement. The requirements and regulations imposed by the federal granting agency are set forth in the original grant agreement specified in Section 1 of the Agreement and are incorporated by reference herein. The original grant agreement is on file with the Clerk of the Board of Supervisors.

(d) Prevailing Wages. If the services to be provided relate to construction or pre-construction-related services, including but not limited to testing, surveying, and inspection, then this Agreement includes the following provisions:

(1) Affected work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying

and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing wages rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or his designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is $30,000 or more.

(e) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 2.19 in all such subcontracts as obligations of the subcontractor.

(f) Notwithstanding any other provisions of this contract, CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement.

2.20 **Taxes.** CONTRACTOR agrees to file all applicable federal and state tax returns or applicable withholding documents and to pay all applicable taxes or to make all required withholdings on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

2.21 **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall

maintain all required records, including clinical documentation, for at least ten (10) years after COUNTY makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

2.22 **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement. The parties further warrant that the signatories to this Agreement are authorized to execute this Agreement on behalf of their respective parties and that any action necessary to bind each such party has been taken by that party prior to entering into this Agreement.

2.23 **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement. The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors terminate this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless COUNTY, through a person authorized to execute this Agreement on behalf of COUNTY, or the Department Director, has determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

2.24 **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the general public.

2.25 **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

2.26 **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

2.27 **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

2.28 **Entirety of Contract.** This Agreement, including documents incorporated by reference and not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

2.29. **Other Terms and Conditions [Reserved.]**

2.30 **Acknowledgment of Funds; Compliance with Government Code Section 7550.**

(a) **In General.** Because the monies provided by COUNTY are funded by taxpayer dollars, it is important that the public know the individuals and organizations that are receiving funds from COUNTY under this Agreement. Therefore, CONTRACTOR shall acknowledge funding received under this Agreement in statements or printed materials relating thereto. All printed materials shall contain the following information in a type size and style appropriate to the materials: "Made possible by funding provided by the County of Napa."

(b) **Compliance With Government Code Section 7550.** In addition, if the Scope of Work includes preparation of a document or written report and the total cost of the work is more than $5,000, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report as required by Government Code section 7550. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

2.31 **Compliance with Federal Health Care Program Requirements.** If CONTRACTOR will be performing services under this Agreement that are covered by a Federal Health Care Program, then:

(a) CONTRACTOR shall observe and comply with all applicable Federal Health Care Program Requirements, including but not limited to those requirements set forth in "Addendum For Contracts Involving Federal Health Care Programs—Revision of March 22, 2021." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and is online at:
www.countyofnapa.org.

(b) CONTRACTOR shall attend and/or provide Compliance Trainings as required by the Department Director unless otherwise deemed exempt by the Department Director or designee thereof.

(c) CONTRACTOR shall make COUNTY whole for any revenues lost arising from an act or omission in billing practices by CONTRACTOR.

(d) CONTRACTOR warrants that no one providing services is an Excluded Individual as such term is defined for Federal Health Care Programs.

(e) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contractors Involving Federal Health Care Programs". Said penalties and fines that may be assessed are as follows: civil monetary penalties of $11,000 per item or service; treble damages for the submission of claims for reimbursement from an excluded health care provider.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the Addenda in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR agrees to abide by COUNTY'S policies entitled "Whistleblower Protections", "The False Claims Act (Federal & State Statutes) & Other Administrative Remedies & Statutes", "Federal Anti-Kickback Prohibitions" and "Physicians Referrals – The Stark Law". The policies are on file with the Clerk of the Napa County Board of Supervisors and the Department and are also online at: www.countyofnapa.org.

(i) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.32 **Compliance with State Medi-Cal Specialty Mental Health Services Requirements.** If CONTRACTOR, under this Agreement, is required to and performs services that are covered by a State Medi-Cal Specialty Mental Health Services Program, then:

(a) CONTRACTOR shall observe and comply with all applicable State Medi-Cal Specialty Mental Health Services Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Medi-Cal Specialty Mental Health Services--Revision No. 1" for services performed on or after July 1, 2014. The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator, or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(c) CONTRACTOR is subject to any audits of its services or claims conducted by the Department, the California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(d) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, disallowances for payment or lost revenues identified and discovered by COUNTY that are attributable to CONTRACTOR's actions when performing its obligations under this Agreement, such as insufficient documentation by CONTRACTOR of Medical Necessity or billing errors by CONTRACTOR that preclude COUNTY from claiming the Federal Financial Participation share of Medi-Cal or State General Funds.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the applicable Addendum in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.33 **Compliance with Mental Health Activities Requirements.** If CONTRACTOR, under this Agreement, is required to perform mental health activities, then:

(a) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(b) CONTRACTOR shall be subject to any audits of its services or claims conducted by Department, California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(c) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, lost revenues as identified and discovered by the COUNTY that are attributable to CONTRACTOR's performance under this Agreement such as CONTRACTOR's insufficient documentation of services as required by the Agreement.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any

payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable requirements.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party; CONTRACTOR shall include the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

2.34 **Compliance with Federal Health Insurance Portability and Accountability Act of 1996.** If CONTRACTOR shall perform services under this Agreement involving the receipt, use, or disclosure of protected health information, then:

(a) Federal and other applicable law. CONTRACTOR shall observe and comply with all applicable requirements of the Federal Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder by the U.S. Department of Health and Human Services (collectively referred to as "HIPAA"), and other applicable laws.

(b) HIPAA Business Associate Agreement. If applicable, CONTRACTOR shall comply with the terms and conditions of the HIPAA Business Associate Agreement previously entered into with COUNTY, which is incorporated by reference herein and on file with the Clerk of the Board of Supervisors.

(c) Use or Disclosure of Protected Health Information. CONTRACTOR may use or disclose protected health information for the purpose of performing functions, activities for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate HIPAA, if done by COUNTY, or the provisions of any applicable HIPAA Business Associate Agreement.

(d) Subcontractors. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall require compliance with all applicable HIPAA provisions, other applicable law, and any applicable HIPAA Business Associate Agreement(s) in such subcontracts as obligations of the subcontractor.

2.35 **Compliance With COUNTY's Obligations Under Contracts With Other Entities.** If CONTRACTOR under this Agreement shall perform services as a subcontractor under COUNTY's contract(s) with other entities, including, but not limited to State and Federal Agencies, and such services involve the use or disclosure of personally identifiable information, then:

(a) CONTRACTOR shall observe and comply with all applicable terms of COUNTY's contract(s) with other entities, including, but not limited to, those requirements set forth in "Addendum For Contracts Involving Personally Identifiable Information Subject to Confidentiality

or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: **www.countyofnapa.org**.

(b) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with the obligations imposed by the "Addendum for Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities".

(c) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the "Addendum for Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" in all such subcontracts as obligations of the subcontractor.

2.36 **Napa Health Matters Listing.** If CONTRACTOR is an organization providing health, human, or social services of a type recognized for listing on the "Napa Health Matters" website, CONTRACTOR agrees to maintain a current and accurate listing on www.NapaHealthMatters.org for such services.

2.37 **Licensure Status.**

(a) License in Good Standing. If CONTRACTOR is providing services under this Agreement as a state-licensed professional, CONTRACTOR shall ensure that CONTRACTOR's professional license is in good standing with all applicable licensing boards. CONTRACTOR understands COUNTY may terminate the Agreement if CONTRACTOR fails to maintain a current professional license in good standing. For purposes of this Agreement, "license in good standing" means there is no suspension, revocation or probation for any reason (including the failure to pay licensing fees), nor any restriction upon the provisions of the license: including, but not limited to, restrictions placed by a licensing agency upon CONTRACTOR's license pursuant to any consent or settlement agreement or to an administrative decision of the licensing agency.

(b) Expiration of License. In the event that CONTRACTOR's professional license is not renewed on or before its expiration, CONTRACTOR shall neither provide nor be reimbursed for services pursuant to this Agreement commencing the day after license expiration and until CONTRACTOR's professional license is renewed. For purposes of this Agreement, renewal date is the date the licensing board issues a renewed license, and it is irrelevant whether the licensing board subsequently recognizes any lapse in licensure.

2.38 **Code of Ethics.** CONTRACTOR understands that Napa County Health and Human Services (HHSA) has adopted a Code of Ethics. If the Department Director determines that the HHSA Code of Ethics applies to CONTRACTOR's activities under this Agreement, CONTRACTOR shall read, understand, and abide by the Code of Ethics, and CONTRACTOR shall on an annual basis provide written certification to HHSA that CONTRACTOR has received, read, understands, and will abide by HHSA's Code of Ethics. The Code of Ethics may be found online at **www.countyofnapa.org** or may be obtained from HHSA upon written request.

2.39 **Electronic Billing System.** CONTRACTOR understands that Napa County Health and Human Services (HHSA) operates an electronic billing system program, which seeks reimbursement from the State of California for the delivery of alcohol, drug abuse and mental health services. If CONTRACTOR provides any services related to alcohol, drug abuse or mental health services under the terms of CONTRACTOR's Agreement, CONTRACTOR agrees, upon request of the Director of HHSA or the Director's designee, to implement the COUNTY's sponsored electronic health record system as part of CONTRACTOR's requirement for the delivery of these services.

2.40 **Audit Report Requirements.** If COUNTY has determined that CONTRACTOR is a "subrecipient" (also known as a "pass-through entity") as defined in 2 C.F.R. § 200 et. seq., CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. § 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement. CONTRACTOR shall observe and comply with all applicable Audit Report Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Federal Awards." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: **www.countyofnapa.org**.

EXHIBIT D(F)
DEPARTMENT OF HEALTH CARE SERVICES

Special Terms and Conditions

(For federally funded service contracts or agreements and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Health Care Services", "California Department of Health Services", 'Department of Health Care Services", "Department of Health Services", "CDHCS", "DHCS", "CDHS", and "DHS" shall all have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount; agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

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1. **Federal Equal Opportunity Requirements**

(Applicable to all federally funded agreements entered into by the Department of Health Care Services)

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.

c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from DHCS under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Human Resources (CalHR), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the CalHR rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to CalHR rates may be approved by DHCS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from DHCS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to agreements in which equipment/property, commodities and/or supplies are furnished by DHCS or expenses for said items are reimbursed by DHCS with state or federal funds provided under the Agreement.)

a. **Equipment/Property definitions**

Wherever the term equipment and/or property is used, the following definitions shall apply:

(1) **Major equipment/property**: A tangible or intangible item having a base unit cost of **$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

(2) **Minor equipment/property**: A tangible item having a base unit cost of **less than $5,000** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement.

b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment/property and services related to such purchases for performance under this Agreement.

(1) Equipment/property purchases shall not exceed $50,000 annually.

To secure equipment/property above the annual maximum limit of $50,000, the Contractor shall make arrangements through the appropriate DHCS Program Contract Manager, to have all remaining equipment/property purchased through DHCS' Purchasing Unit. The cost of equipment/property purchased by or through DHCS shall be deducted from the funds available in this Agreement. Contractor shall submit to the DHCS Program Contract Manager a list of equipment/property specifications for those items that the State must procure. DHCS may pay the vendor directly for such arranged equipment/property purchases and title to the equipment/property will remain with DHCS. The equipment/property will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the DHCS Program Contract Manager, in writing, of an alternate delivery address.

(2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.

(3) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:

(a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.

(b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.

(c) Procurements shall be conducted in a manner that provides for all of the following:

[1] Avoid purchasing unnecessary or duplicate items.

[2] Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.

[3] Take positive steps to utilize small and veteran owned businesses.

d. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of $5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.

e. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.

f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.

g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.

h. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment/Property Ownership / Inventory / Disposition

(Applicable to agreements in which equipment/property is furnished by DHCS and/or when said items are purchased or reimbursed by DHCS with state or federal funds provided under the Agreement.)

a. Wherever the term equipment and/or property is used in Provision 4, the definitions in Paragraph a of Provision 3 shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement shall be considered state equipment and the property of DHCS.

(1) **Reporting of Equipment/Property Receipt** - DHCS requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by DHCS or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the DHCS Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by DHCS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with DHCS Funds) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager.

(2) **Annual Equipment/Property Inventory** - If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the DHCS Program Contract Manager using a form or format designated by DHCS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of DHCS-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager. Contractor shall:

(a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).

(b) Submit the inventory report to DHCS according to the instructions appearing on the inventory form or issued by the DHCS Program Contract Manager.

(c) Contact the DHCS Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by either the DHCS Program Contract Manager or DHCS' Asset Management Unit.

b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.

c. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.

d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.

(1) In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor

and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the DHCS Program Contract Manager.

e. Unless otherwise stipulated by the Program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall only be used for performance of this Agreement or another DHCS agreement.

f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the DHCS Program Contract Manager and shall, at that time, query DHCS as to the requirements, including the manner and method, of returning state equipment and/or property to DHCS. Final disposition of equipment and/or property shall be at DHCS expense and according to DHCS instructions. Equipment and/or property disposition instructions shall be issued by DHCS immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, DHCS may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different DHCS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under this Agreement.)

(1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to DHCS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to DHCS.

(2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.

(3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.

(4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

(a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of $1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, to the Contractor and/or Subcontractor.

(b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the DHCS Program Contract Manager. The certificate of insurance shall identify the DHCS contract or agreement number for which the insurance applies.

(c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to DHCS.

(d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.

(e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

[1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Care Services).

[2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.

[3] The insurance carrier shall notify the California Department of Health Care Services (DHCS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.

(f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by DHCS, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.

(g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, DHCS may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing $5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding $5,000, the Contractor shall obtain at least three bids or justify a sole source award.

(1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.

(2) DHCS may identify the information needed to fulfill this requirement.

(3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:

(a) A local governmental entity or the federal government,

(b) A State college or State university from any State,

(c) A Joint Powers Authority,

(d) An auxiliary organization of a California State University or a California community college,

(e) A foundation organized to support the Board of Governors of the California Community Colleges,

(f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,

(g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations,

(h) Entities and/or service types identified as exempt from advertising and competitive bidding in State Contracting Manual Chapter 5 Section 5.80 Subsection B.2. View this publication at the following Internet address: https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting

b. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

(1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.

c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of $5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.

d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.

e. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.

f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.

g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.

h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(*Subcontractor Name*) agrees to maintain and preserve, until three years after termination of (*Agreement Number*) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

i. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.

j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to DHCS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHCS under this Agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of $10,000.)

a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.

b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.

c. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896.77)

d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.

   (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

   (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

e. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

f. The Contractor shall, if applicable, comply with the Single Audit Act and the audit requirements set forth in 2 C.F.R. § 200.501 (2014).

8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be

performed in such a manner as will not unduly delay the work.

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.

c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

d. DHCS has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Termination

a. **For Cause**

The State may terminate this Agreement, in whole or in part, and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand. If this Agreement is terminated, in whole or in part, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials, related to the terminated portion of the Contract, including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The State shall pay contract price for completed deliverables delivered and accepted and items the State requires the Contractor to transfer as described in this paragraph above.

b. **For Convenience**

The State retains the option to terminate this Agreement, in whole or in part, without cause, at the State's convenience, without penalty, provided that written notice has been delivered to the Contractor at least ninety (90) calendar days prior to such termination date. In the event of termination, in whole or in part, under this paragraph, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials related to the terminated portion of the contract including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The Contractor will be entitled to compensation upon submission of an invoice and proper proof of claim for the services and products satisfactorily rendered, subject to all payment provisions of the Agreement. Payment is limited to expenses necessarily incurred pursuant to this Agreement up to the date of termination.

11. Intellectual Property Rights

a. **Ownership**

(1) Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

(2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

(3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of DHCS' Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of DHCS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHCS. **Except as otherwise set forth herein, neither the Contractor nor DHCS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to DHCS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHCS in the third-party's license agreement.

(4) Contractor agrees to cooperate with DHCS in establishing or maintaining DHCS' exclusive rights in the Intellectual Property, and in assuring DHCS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DHCS and which result directly or indirectly from this Agreement or any subcontract.

(5) Contractor further agrees to assist and cooperate with DHCS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DHCS' Intellectual Property rights and interests.

b. **Retained Rights / License Rights**

(1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, Contractor shall

retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to DHCS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.

(2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of DHCS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

(1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DHCS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

(2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, shall include DHCS' notice of copyright, which shall read in 3mm or larger typeface: "© *[Enter Current Year e.g., 2010, etc.]*, California Department of Health Care Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Care Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to DHCS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to DHCS, without additional compensation, all its right, title and interest in and to such inventions and to assist DHCS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining DHCS' prior written approval; and (ii) granting to or obtaining for DHCS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and DHCS determines that the Intellectual Property

should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to DHCS.

f. Warranties

(1) Contractor represents and warrants that:

(a) It is free to enter into and fully perform this Agreement.

(b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.

(c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

(d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

(e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.

(f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to DHCS in this Agreement.

(g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

(h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

(2) DHCS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

(1) Contractor shall indemnify, defend and hold harmless DHCS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DHCS'

use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. DHCS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DHCS.

(2) Should any Intellectual Property licensed by the Contractor to DHCS under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DHCS' right to use the licensed Intellectual Property in accordance with this Agreement at no expense to DHCS. DHCS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for DHCS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DHCS shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

(3) Contractor agrees that damages alone would be inadequate to compensate DHCS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DHCS would suffer irreparable harm in the event of such breach and agrees DHCS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, DHCS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

12. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of $100,000 must comply with the following provisions unless said agreement is exempt by law.

a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 7606) section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations.

b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Clean Water Act (33 U.S.C. 1251 et seq.), as amended.

13. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior DHCS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference

conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

14. Confidentiality of Information

a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.

b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.

c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.

d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

f. As deemed applicable by DHCS, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

15. Documents, Publications and Written Reports

(Applicable to agreements over $5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds $5,000.

16. Dispute Resolution Process

a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.

(1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees

with the Branch Chief's decision, the Contractor may appeal to the second level.

(2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code Section 100171.

c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence shall be directed to the DHCS Program Contract Manager.

d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

17. Financial and Compliance Audit Requirements

a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.

b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code Section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code Section 38030).

c. The Contractor, as indicated below, agrees to obtain one of the following audits:

(1) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040)*** and receives **$25,000 or more** from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(2) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040)*** and receives **less than $25,000** per year from any State agency under a direct service contract or agreement, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(3) ***If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by 2 C.F.R. §§ 200.64, 200.70, and 200.90)*** and expends $750,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in 2 C.F.R. 200.501 entitled "Audit Requirements". An audit conducted pursuant to this provision will fulfill the audit requirements

outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:

(a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

(b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.

(4) If the Contractor submits to DHCS a report of an audit other than a 2 C.F.R. 200.501audit, the Contractor must also submit a certification indicating the Contractor has not expended $750,000 or more in federal funds for the year covered by the audit report.

d. Two copies of the audit report shall be delivered to the DHCS program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the DHCS Program Contract Manager shall forward the audit report to DHCS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.

e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The DHCS program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.

f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.

g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.

h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.

i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.

j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.

k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

18. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a

subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

19. Novation Requirements

If the Contractor proposes any novation agreement, DHCS shall act upon the proposal within 60 days after receipt of the written proposal. DHCS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHCS will initiate an amendment to this Agreement to formally implement the approved proposal.

20. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 2 CFR 180, 2 CFR 376

b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, obstruction of justice, or the commission of any other offense indicating a lack of business integrity or business honesty that seriously affects its business honesty;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and

(4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(5) Have not, within a three-year period preceding this application/proposal/agreement, engaged in any of the violations listed under 2 CFR Part 180, Subpart C as supplemented by 2 CFR Part 376.

(6) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.

(7) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHCS Program Contract Manager.

d. The terms and definitions herein have the meanings set out in 2 CFR Part 180 as supplemented by 2 CFR Part 376.

e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this Agreement for cause or default.

21. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.

c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

22. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, DHCS shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

23. Payment Withholds

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, DHCS may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or $3,000 whichever is greater, until DHCS receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

24. Performance Evaluation

(Not applicable to grant agreements.)

DHCS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with DHCS. Negative performance evaluations may be considered by DHCS prior to making future contract awards.

25. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

26. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to DHCS or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

27. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

28. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

29. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

30. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.

b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.

c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.

d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

31. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.

b. As used herein, fringe benefits do not include:

(1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
(2) Director's and executive committee member's fees.
(3) Incentive awards and/or bonus incentive pay.
(4) Allowances for off-site pay.
(5) Location allowances.
(6) Hardship pay.
(7) Cost-of-living differentials

c. Specific allowable fringe benefits include:

(1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.

d. To be an allowable fringe benefit, the cost must meet the following criteria:

(1) Be necessary and reasonable for the performance of the Agreement.
(2) Be determined in accordance with generally accepted accounting principles.
(3) Be consistent with policies that apply uniformly to all activities of the Contractor.

e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

(1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.

(2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.

(3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

32. Suspension or Stop Work Notification

a. DHCS may, at any time, issue a notice to suspend performance or stop work under this Agreement. The initial notification may be a verbal or written directive issued by the funding Program's Contract Manager. Upon receipt of said notice, the Contractor is to suspend and/or stop all, or any part, of the work called for by this Agreement.

b. Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within 30 working days of the verbal notification. The suspension or stop work notification shall remain in effect until further written

notice is received from DHCS. The resumption of work (in whole or part) will be at DHCS' discretion and upon receipt of written confirmation.

(1) Upon receipt of a suspension or stop work notification, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.

(2) Within 90 days of the issuance of a suspension or stop work notification, DHCS shall either:

(a) Cancel, extend, or modify the suspension or stop work notification; or

(b) Terminate the Agreement as provided for in the Cancellation / Termination clause of the Agreement.

c. If a suspension or stop work notification issued under this clause is canceled or the period of suspension or any extension thereof is modified or expires, the Contractor may resume work only upon written concurrence of funding Program's Contract Manager.

d. If the suspension or stop work notification is cancelled and the Agreement resumes, changes to the services, deliverables, performance dates, and/or contract terms resulting from the suspension or stop work notification shall require an amendment to the Agreement.

e. If a suspension or stop work notification is not canceled and the Agreement is cancelled or terminated pursuant to the provision entitled Cancellation / Termination, DHCS shall allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.

f. DHCS shall not be liable to the Contractor for loss of profits because of any suspension or stop work notification issued under this clause.

33. Public Communications

"Electronic and printed documents developed and produced, for public communications shall follow the following requirements to comply with Section 508 of the Rehabilitation Act and the American with Disabilities Act:

A. Ensure visual-impaired, hearing-impaired and other special needs audiences are provided material information in formats that provide the most assistance in making informed choices."

34. Compliance with Statutes and Regulations

a. The Contractor shall comply with all California and federal law, regulations, and published guidelines, to the extent that these authorities contain requirements applicable to Contractor's performance under the Agreement.

b. These authorities include, but are not limited to, Title 2, Code of Federal Regulations (CFR) Part 200, subpart F, Appendix II; Title 42 CFR Part 431, subpart F; Title 42 CFR Part 433, subpart D; Title 42 CFR Part 434; Title 45 CFR Part 75, subpart D; and Title 45 CFR Part 95, subpart F. To the extent applicable under federal law, this Agreement shall incorporate the contractual provisions in these federal regulations and they shall supersede any conflicting provisions in this Agreement.

35. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of $100,000 per Section 1352 of Title 31, U.S.C.)

a. Certification and Disclosure Requirements

(1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of Title 31, U.S.C., and which exceeds

$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.

(2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.

(3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;

(b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or

(c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.

(4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding $100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.

(5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHCS Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

Attachment 1
State of California
Department of Health Care Services

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of $100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Napa County Name of Contractor	 Printed Name of Person Signing for Contractor
240218B Contract / Grant Number	 Signature of Person Signing for Contractor
 Date	Chair of the Board of Supervisors Title

After execution by or on behalf of Contractor, please return to:

California Department of Health Care Services
Local Governmental Financing Division
County-Based Medi-Cal Administrative Activities Unit
1501 Capitol Avenue
P.O. Box 997436, MS 2628
Sacramento, CA 95899-7436

DHCS reserves the right to notifiy the contractor in writing of an alternate submission address.

Attachment 2

CERTIFICATION REGARDING LOBBYING

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
[ ] a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	[ ] a. bid/offer/application b. initial award c. post-award	[ ] a. initial filing b. material change For Material Change Only: Year _____ quarter _____ date of last report _____.

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ___, if known: Congressional District, If known:	Congressional District, If known:
6. Federal Department/Agency	7. Federal Program Name/Description: CDFA Number, if applicable: _____
8. Federal Action Number, if known:	9. Award Amount, if known: $
10.a. Name and Address of Lobbying Registrant *(If individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from 10a.* *(Last name, First name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person that fails to file the required disclosure shall be subject to a not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: Chair of the Board of Supervisors Telephone No.: Date:

Federal Use Only	Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriateclassification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if itis, or expects to be,a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection *of information*. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

EXHIBIT E
CONTRACTOR'S PRIVACY AND SECURITY COMMITMENTS
(July 1, 2023 through June 30, 2024)

This Exhibit shall constitute the "Agreement" between **UP VALLEY FAMILY CENTERS** ("CONTRACTOR") and Napa County, and applies to the functions Contractor will perform on behalf of Napa County (collectively, "Services"), that are identified in the Master Agreement.

1. **Purpose.** This Agreement is intended to ensure that CONTRACTOR will establish and implement appropriate privacy and security safeguards with respect to Napa County Confidential Information. Napa County Confidential Information includes:

- Personally Identifiable Information: such as name, date of birth, address, phone number, Social Security Number, California Identification Number, Driver's License Number, email address, ip address, and any other data that could reasonably identify an individual; pertaining to clients or employees of Napa County; and
- Medical Information: any individually identifiable information, in electronic or physical form, pertaining to the past, present, or future medical condition of clients or employees of Napa County

2. **Permitted Uses and Disclosures.**

(a) Except as otherwise limited in this Agreement, CONTRACTOR may use or disclose Napa County Confidential Information to perform functions, activities, or services for, or on behalf of Napa County for the purposes specified in Attachment A to this Exhibit, which if completed and attached hereto is incorporated by reference, or as otherwise specified in the Master Agreement, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate California Civil Code Sections 56-56.37, collectively known as the Confidentiality of Medical Information Act (CMIA), and/or any other relevant state and federal privacy laws and regulations. CONTRACTOR must also make reasonable efforts to limit the use and disclosure of Napa County Confidential Information to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

(b) Except as otherwise limited in this Agreement, CONTRACTOR may use Napa County Confidential Information for the proper management and administration of the CONTRACTOR, or to carry out the legal responsibilities of CONTRACTOR.

(c) Except as otherwise limited in this Agreement, CONTRACTOR may disclose Napa County Confidential Information for the proper management and administration of the CONTRACTOR provided that disclosures are required by law, or CONTRACTOR obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) CONTRACTOR may use Napa County Confidential Information to report violations of law to appropriate Federal and State authorities.

(e) CONTRACTOR may not use or disclose Napa County Confidential Information in a manner that would violate CMIA (or other relevant state and federal privacy laws and

regulations) if done by Napa County, except for the specific uses and disclosures set forth herein.

3. **Appropriate Safeguards.**

(a) CONTRACTOR agrees to use appropriate safeguards to prevent the use or disclosure of Napa County Confidential Information other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Napa County Confidential Information that is created, received, maintained, or transmitted on behalf of Napa County and limit its use and disclosure to the minimum necessary.

(b) Safeguarding Electronic Napa County Confidential Information. CONTRACTOR must secure all Electronic Napa County Confidential Information by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with the National Institute of Standards Technology (NIST) Standards and Federal Information Processing Standards (FIPS) as applicable. Should CONTRACTOR fail to comply with this provision, it agrees to hold harmless, defend at its own expense and indemnify Napa County in accordance with the terms of Section 6 of the Agreement, "Indemnification".

(c) Destruction of Napa County Confidential Information on paper, film, or other hard copy media must involve either shredding or otherwise destroying it so that it cannot be read or reconstructed.

(d) Should any employee or subcontractor of CONTRACTOR have direct, authorized access to computer systems of Napa County that contain Napa County Confidential Information, CONTRACTOR shall immediately notify Napa County of any change of such personnel (e.g., employee or subcontractor termination, or change in assignment where such access is no longer necessary) in order for Napa County to disable the previously authorized access.

4. **Reporting Unauthorized Uses and Disclosures.**

(a) CONTRACTOR agrees to notify Napa County of any access, use or disclosure of Napa County Confidential Information not permitted or provided for by the Agreement of which it becomes aware. Such notification will be made immediately after discovery by telephone call at (707) 253-4523, plus e-mail at Privacy.Officer@countyofnapa.org, and will include, to the extent possible, the identification of each Individual whose Napa County Confidential Information has been, or is reasonably believed by the CONTRACTOR to have been, accessed, acquired, used or disclosed, a description of the Napa County Confidential Information involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by CONTRACTOR.

(b) A breach or unauthorized access, use, or disclosure shall be treated as discovered by CONTRACTOR on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the CONTRACTOR or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent, or other representative of CONTRACTOR

(c) In meeting its obligations under this section, it is understood that CONTRACTOR is not acting as the Napa County's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Agreement, it is understood and agreed that CONTRACTOR is at all times acting as an independent contractor in providing services pursuant to this Agreement and the Master Agreement.

5. **Mitigating the Effect of a Breach, Security Incident, or Unauthorized Access, Use or Disclosure of Napa County Confidential Information**

(a) CONTRACTOR agrees to mitigate, to the greatest extent possible, any harm that results from the breach, security incident, or unauthorized access, use or disclosure of Napa County Confidential Information by CONTRACTOR or its employees, officers, subcontractors, agents, or other representatives.

(b) Following a breach, security incident, or any unauthorized access, use or disclosure of Napa County Confidential Information, CONTRACTOR agrees to take any and all corrective action(s) necessary to prevent recurrence, to document any such action(s), and to make this documentation available to Napa County.

(c) Except as required by law, CONTRACTOR agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of Napa County Confidential Information without obtaining Napa County's prior written consent. Napa County hereby reserves the sole right to determine whether and how such notice is to be provided to any Individuals, regulatory agencies, or others as may be required by law, regulation, or contract terms, as well as the contents of such notice. When applicable law requires the breach be reported to a federal or state agency or that notice be given to media outlets, CONTRACTOR shall cooperate with and coordinate with Napa County to ensure such reporting is in compliance with applicable law and to prevent duplicate reporting, and to determine responsibilities for reporting.

6. **Indemnification.**

To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees or volunteers or other contractors or their subcontractors. Each Party shall notify the other Party immediately in writing of any claim or damage related to activities performed under this Agreement. The Parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either Party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

7. **Individuals' Rights.**

(a) CONTRACTOR agrees to provide access, at the request of Napa County, and in the time and manner designated by the Napa County, to Napa County Confidential Information to Napa County or, as directed by Napa County, to an Individual.

8. **Agents and Subcontractors of CONTRACTOR.**

(a) CONTRACTOR agrees to enter into written agreements with any agent, subcontractor or vendor, to whom it provides Napa County Confidential Information received from Napa County or created, received , maintained or transmitted by CONTRACTOR on behalf of Napa

County, that impose the same restrictions, conditions and requirements that apply through this Agreement to CONTRACTOR with respect to such information, including the requirement to immediately notify the CONTRACTOR of any instances of any breach, security incident, intrusion, or unauthorized access to or use or disclosure of Napa County Confidential Information of which it becomes aware. Upon request, CONTRACTOR shall provide copies of such agreements to Napa County.

(b) CONTRACTOR shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

9. **Audit, Inspection, and Enforcement.**

(a) CONTRACTOR agrees to make internal practices, books, and records relating to the use and disclosure of Napa County Confidential Information received from Napa County or created, received, maintained, or transmitted by CONTRACTOR on behalf of Napa County, available to any state or federal agency, for the purposes of determining compliance with applicable state and federal privacy laws and regulations.

(b) With reasonable notice, Napa County and its authorized agents or contractors may audit and/or examine CONTRACTOR's facilities, systems, policies, procedures, and documentation relating to the security and privacy of Napa County Confidential Information to determine compliance with the terms of this Agreement. CONTRACTOR shall promptly correct any violation of this Agreement found by Napa County and shall certify in writing that the correction has been made. CONTRACTOR's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Napa County's enforcement rights under this Agreement.

10. **Permissible Requests by Napa County**. Napa County shall not request that CONTRACTOR use or disclose Protected Napa County Confidential Information in any manner that would not be permissible under the relevant state and federal privacy laws and regulations if done by Napa County.

11. **Term and Termination.**

(a) The terms of this Agreement shall remain in effect for the duration of all services provided by CONTRACTOR under the Master Agreement and for so long as CONTRACTOR remains in possession of any Napa County Confidential Information received from Napa County, or created, received, maintained or transmitted by CONTRACTOR on behalf of Napa County unless Napa County has agreed in accordance with this Section 11 that it is not feasible to return or destroy all Napa County Confidential Protected Information.

(b) Upon termination of the Master Agreement, CONTRACTOR shall recover any Napa County Confidential Information relating to the Master Agreement and this Agreement in its possession and in the possession of its subcontractors, agents or representatives. CONTRACTOR shall return to Napa County, or destroy with the consent of Napa County, all such Napa County Confidential Information, in any form, in its possession and shall retain no copies.

(c) If CONTRACTOR believes it is not feasible to return or destroy the Napa County Confidential Information, CONTRACTOR shall so notify Napa County in writing. The notification shall include: (1) a statement that the CONTRACTOR has determined that it is not

feasible to return or destroy the Napa County Confidential Information in its possession, and (2) the specific reasons for such determination. CONTRACTOR may retain only that Napa County Confidential Information which is necessary for CONTRACTOR to continue its proper management and administration or to carry out its legal responsibilities. If Napa County agrees in its sole discretion that CONTRACTOR cannot feasibly return or destroy the Napa County Confidential Information, CONTRACTOR shall ensure that any and all protections, requirements and restrictions contained in the Master Agreement and this Agreement shall be extended to any Napa County Confidential Information for so long as CONTRACTOR maintains such Napa County Confidential Information, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the Napa County Confidential Information infeasible.

(d) Napa County may immediately terminate the Master Agreement if it determines that CONTRACTOR has violated a material term of this Agreement.

(e) Survival. The obligations of CONTRACTOR under this Section 11 shall survive this Agreement.

12. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Napa County and CONTRACTOR to comply with the requirements of relevant state and federal privacy laws and regulations.

13. **Notices.**

(a) All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

(b) Any mailed notice, demand, request, consent, approval or communication that Napa County desires to give to CONTRACTOR shall be addressed to CONTRACTOR at the mailing address set forth in the Master Agreement.

(c) Any mailed notice, demand, request, consent, approval or communication that CONTRACTOR desires to give to Napa County shall be addressed to Napa County at the following address:

Napa County Privacy Officer
2751 Napa Valley Corporate Drive
Napa, CA 94558

(707) 253-4715

(d) For purposes of subparagraphs (b) and (c) above, either party may change its address by notifying the other party of the change of address.

14. **Lost Revenues; Penalties/Fines.**

(a) Penalties/Fines for Failure to Comply with relevant privacy laws and regulations. CONTRACTOR shall pay any penalty or fine assessed against Napa County arising from CONTRACTOR's failure to comply with the obligations imposed by relevant state and federal privacy laws and regulations.

(b) Penalties/Fines (other). CONTRACTOR shall pay any penalty or fine assessed against Napa County arising from CONTRACTOR's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-93

TO: Board of Supervisors

FROM: Jennifer Yasumoto, Director of Health and Human Services Agency

REPORT BY: Summer Isham, Contracts Supervisor

SUBJECT: Acceptance of a Donation

RECOMMENDATION

Accept an anonymous donation in the amount of $11,350 to the County Children's Trust Fund (CCTF). (Fiscal Impact: $11,350; Health and Human Services Agency Fund 2000; Child Welfare Services Division, Special Revenue Fund Children's Trust Fund 2000450; Budgeted; Discretionary)

BACKGROUND

In 1983, the legislature passed Assembly Bill 2994, which authorized the creation of a CCTF. The purpose of the CCTF is to support child abuse prevention services in the community and to fund child abuse prevention coordinating councils (CAPCs).

HHSA received a donation of $11,350 from an organization that wishes to remain anonymous. Board Resolution No. 05-40 and the Recommended Procedure for the Acceptance and Disbursement of Gifts, Bequests, or Devices requires that donations in excess of $1,000 be accepted by the Board of Supervisors (Board).

If the Board accepts these funds they will be deposited into the CCTF which resides in HHSA's budget, and will be applied to help fund our local CAPC.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Health and Human Services, Child Welfare Services

Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	There is no mandate to accept donations, however, donations made to CCFT provide for child abuse prevention activities.
Is the general fund affected?	No
Future fiscal impact:	There is no future fiscal impact beyond the current fiscal year.
Consequences if not approved:	If this action is not approved, the County will not have this donated funding available to help support child abuse prevention activities in our community.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-110

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Jennifer Palmer, Director of Housing & Homeless Services

SUBJECT: Amendment No. 3 to Agreement No. 220376B with Partnership Health Plan for the extension of certain Community Supports under the California Advancing Innovating Medi-Cal Program known as "CalAIM"

RECOMMENDATION

Approve and authorize Amendment No. 3 to Master Services Agreement No. 220376B with Partnership Health Plan for the County to provide community support to Medi-Cal participants through December 2024 generating approximately $750,000 in yearly revenue (Fiscal Impact: Revenues of $750,000, Housing & Homeless Fund 2030, Budgeted, Discretionary).

BACKGROUND

CalAIM is a Medi-Cal Waiver program designed to build a whole system, person-centered approach to care, in which clinical and social services are integrated to support people's health and wellbeing throughout their lives. As a statewide, population health initiative CalAIM will reach all Medi-Cal members while focusing particularly on advancing health equity by expanding resources available to populations and communities that have been historically under-resources and under-served.

The first stage of CalAIM implementation involves scaling impactful services from this and other initiatives statewide through Enhanced Care Management (ECM) and Community Supports (California's nomenclature for the proposed list of state approved In Lieu of Services/ILOS). ECM is designed to address the clinical and non-clinical needs of the highest-need enrollees through intensive coordination of health and health-related services. Its goal is to meet beneficiaries where they are - on the street, in a shelter, in their doctor's office, or at home - by providing a single Lead Care Manager to coordinate care and services among the physical, behavioral, dental, developmental, and social services delivery systems, making it easier for beneficiaries to get the right care at the right time.

Community Supports are services intended to be cost effective alternatives to traditional medical services or settings. Community Supports address the social drivers of health - the factors in people's lives that influence their overall health outcomes, such as housing, medical respite, assisted living, and medically tailored meals. A

total of 14 services are approved under CalAIM:

- Housing Transition Navigation Services
- Housing Deposits
- Housing Tenancy and Sustaining Services
- Short-Term Post-Hospitalization Housing
- Recuperative Care (Medical Respite)
- Day Habilitation Programs
- Caregiver Respite Services
- Nursing Facility Transition/Diversion to Assisted Living Facilities
- Community Transition Services/Nursing Facility Transition to a Home
- Personal Care and Homemaker Services
- Environmental Accessibility Adaptations (Home Modifications)
- Medically Supportive Food/Meals/Medically Tailored Meals
- Asthma Remediation

The structure of CalAIM allows the Medi-Cal managed care plans, locally Partnership Health Plan, to identify which Community Supports it wants to offer and contract for those services directly with providers. Locally, Napa County Department of Housing & Homeless Services (DHHS) is the delegate administrative entity (DAE) for three Community Supports: Housing Navigation, Housing Deposits and Housing Tenancy & Sustaining Services. DHHS is eligible to receive payment in exchange for the direct provision or sub-contracted provision of services to CalAIM beneficiaries through a Master Service Agreement with Partnership Health Plan.

Today's action amends Agreement No 220376B for reimbursement for the fee-for service costs for the provision of Housing Transition Navigation Services, Housing Deposits and Housing Tenancy and Sustaining Services to include all applicable Exhibits and Attachments and an expiration date extension through December 2024 for approximately $750,000 in estimated yearly revenue.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Fund 2030
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The agreement provides revenues to support expansion of important housing services to assist individuals and families experiencing homelessness with obtaining and maintaining permanent housing.

Is the general fund affected?	No
Future fiscal impact:	CalAIM funds will be utilized to expand housing services in current and future fiscal years.
Consequences if not approved:	Napa County will be unable to receive reimbursement for specific housing activities without the contract.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

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AMENDMENT NO. 3 TO THE MASTER SERVICES AGREEMENT

Between

PARTNERSHIP HEALTHPLAN OF CALIFORNIA

and

NAPA COUNTY

This amendment ("Amendment") to the Master Services Agreement for Community Supports ("Agreement") is entered into between Partnership HealthPlan of California ("Partnership") and Napa County ("Subcontractor"), (collectively, the "Parties"). This Amendment is to be effective November 21, 2023. In the event of a conflict between this Amendment and any other provision of the Agreement, this Amendment will control. Any capitalized term utilized in this Amendment will have the same meaning ascribed to it in the Agreement unless otherwise set forth in this Amendment. If a capitalized term used in this Amendment is not defined in the Agreement or this Amendment, it will have the same meaning ascribed to it in the Medi-Cal Contract.

RECITALS

WHEREAS, the Parties entered into the Agreement dated January 1, 2022, which was subsequently first amended by Amendment No. 2, effective January 1, 2023;

WHEREAS, the Parties desire to amend the Agreement to extend the term and to reflect compliance with recent updates to the Medi-Cal Contract;

NOW, THEREFORE, in consideration of the foregoing, the Agreement is amended as follows:

1. ARTICLE I – COMMUNITY SUPPORTS (ILOS) DEFINITIONS is hereby removed in its entirety and replaced with the following:

ARTICLE I – COMMUNITY SUPPORTS DEFINITIONS

Key terms are defined as follows:

Applicable Requirements: to the extent applicable to this Agreement and the duties, right, and privileges hereunder, all federal, State, county, and local statutes, rules, regulations, and ordinances, including, but not limited to, Welfare and Institutions Code and its implementing regulations, the Social Security Act and its implementing regulations, the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing regulations, the Health Information Technology for Economic and Clinical Health ("HITECH") Act, the Deficit Reduction Act of 2005 and its implementing regulations, the Federal Patient Protection and Affordable Care Act (Public Law 111-148) as amended by the Federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (collectively, "Affordable Care Act"), the California Consumer Privacy Act of 2018 and its implementing regulations, the California Confidentiality of Medical Information Act;

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DHCS Medi-Cal Provider Manual; the Medi-Cal Contracts, including the Community Supports Provisions; all Regulatory Agency guidance, executive orders, instructions, All Plan Letters ("APL(s)"), bulletins, and policies; and all standards, rules, and regulations of Accreditation Organizations.

Authorization or Prior Authorization: written and/or electronic approval by Partnership for the rendering of Community Supports, which shall be determined pursuant to the authorization procedures described in the Partnership Provider Manual and Policies.

Community Supports Services: those services or settings set forth in Exhibit A of this Agreement that are offered in place of services or settings covered under the California Medicaid State Plan and are medically appropriate, cost-effective alternatives to services or settings under the State Plan.

Community Supports Provider: a Partnership-contracted or Subcontractor-contracted provider of DHCS-approved Community Supports. Community Supports Providers are entities with experience and/or training providing one or more of the Community Supports approved by DHCS.

DHCS: the California Department of Health Care Services which funds health care for Medi-Cal Members.

Enhanced Care Management ("ECM"): a whole-person, interdisciplinary approach to care that addresses the clinical and non-clinical needs of high-need and/or high-cost Members through systematic coordination of services and comprehensive care management that is community-based, interdisciplinary, high-touch, and person centered. ECM is a Medi-Cal benefit.

ECM Provider: a Partnership-contracted provider of ECM. ECM Providers are community-based entities with experience and expertise providing intensive, in-person care management services to individuals. ECM Providers may include, but are not limited to, the following entities: (i) counties; (ii) county behavioral health providers; (iii) Primary Care Physician, Specialist, or physician groups; (iv) Federally Qualified Health Centers;
(v) Community Health Centers; (vi) Community-based organizations; (vii) hospitals or hospital-based physician groups or clinics (including public hospitals and district and/or municipal public hospitals); (viii) Rural Health Clinics and/or Indian Health Services Programs; (ix) local health departments; (x) behavioral health entities; (xi) community mental health centers; (xii) substance use disorder treatment providers; (xiii) organizations serving individuals experiencing homelessness; (xiv) organizations serving justice involved individuals; (xv) California Children Services Program providers; and (xvi) other qualified providers or entities not listed above, as approved by DHCS.

Health Disparity: differences in health, including mental health, and outcomes closely linked with social, economic, and environmental disadvantage, which are often driven by the social conditions in which individuals live, learn, work, and play. Characteristics such as race, ethnicity, age, disability, sexual orientation or gender identity, socio-economic status, geographic location, and other factors historically linked to exclusion or discrimination are known to influence the health of individuals, families, and communities.

Health Equity: the reduction or elimination of Health Disparities, Health Inequities, or other disparities in health that adversely affect vulnerable populations.

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Health Inequity: a systematic difference in the health status of different population groups arising from the social conditions in which Members are born, grow, live, work, and/or age, resulting in significant social and economic costs both to individuals and societies.

Member: a Medi-Cal recipient who resides in Partnership's service area and is enrolled in a Medi-Cal managed care health plan administered by Partnership.

Model of Care ("MOC"): Partnership's framework for providing ECM and Community Supports, including its Policies and Procedures for partnering with ECM Providers and Community Supports Providers, as approved by DHCS. The MOC is hereby incorporated into this Agreement by reference.

Network Provider: any Community Supports Provider with whom Subcontractor contracts to provide Covered Services to Members under this Agreement.

Provider Manual or Partnership Provider Manual: the Manual of Operational Policies and Procedures for Partnership's Medi-Cal Managed Care Program.

Regulatory Agencies: the federal, State, county, and local government agencies and entities with regulatory or other authority over Partnership, Subcontractor, and/or this Agreement. Regulatory Agency includes, but is not limited to, DHCS, Department of Managed Health Care ("DMHC"), State Auditor, United States Department of Health and Human Services ("DHHS") and its agents (the "Secretary"), DHHS Inspector General, Centers of Medicare & Medicaid Services ("CMS"), U.S. Department of Justice ("DOJ"), California Attorney General - Division of Medi-Cal Fraud and Elder Abuse ("DMFEA"), and Comptroller General of the United States.

Urgent Community Supports: those Services that qualify for expedited Authorization under specific circumstances set forth in the MOC, such as, but not limited to, when a delay in the provision of Community Supports would be harmful to the Member or inconsistent with efficiency and cost-effectiveness. For example, recuperative care services for an individual who no longer requires hospitalization, but still needs to heal from an injury or illness, including behavioral health conditions, and whose condition would be exacerbated by an unstable living environment.

2. ARTICLE IV – PAYMENT FOR COMMUNITY SUPPORTS (ILOS), Section 4.4: "Overpayments or recoupments" is hereby removed in its entirety and replaced with the following:

Subcontractor will report all overpayments directly to Partnership, repay all overpayments within sixty (60) days of the date the overpayment was identified, and notify Partnership in writing of the reason for the overpayment. (42 CFR section 438.608(d)(2)). Pursuant to 42 CFR Section 438.608(d), Partnership is required to report Subcontractor overpayments to DHCS annually. Overpayment is any payment made to Subcontractor by Partnership to which Subcontractor is not entitled under Title XIX of the Social Security Act or this Agreement. Subcontractor acknowledges and agrees that, if Partnership identifies the overpayment, Subcontractor will reimburse Partnership within thirty (30) Working Days of receipt of a timely written or electronic notice from Partnership of an overpayment, unless Subcontractor contests such overpayment within thirty (30) Working Days in writing and identifies the portion of the overpayment being

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contested and the specific reasons for contesting the overpayment. Subcontractor agrees that Partnership shall have the right to recover such uncontested amounts from Subcontractor. If payment of uncontested recoupment is not received by Partnership within the appropriate timeframe from Partnership's notice, Partnership reserves the right to recoupment or offset from current or future amounts due from Partnership to Subcontractor.

3. ARTICLE XI - TERM, TERMINATION AND AMENDMENT, Section 11.1: "TERM" is hereby removed in its entirety and replaced with the following:

   The term of this Agreement begins on the Effective Date and will continue in effect until December 31, 2024, unless terminated sooner in accordance with the terms of this Agreement.

4. ARTICLE XI - TERM, TERMINATION AND AMENDMENT, Section 11.4: "AMENDMENT" is hereby removed in its entirety and replaced with the following:

   Except as may otherwise specified in this Agreement and its exhibits, the Agreement may be amended only by both Parties agreeing to the amendment in writing, and must be executed by a duly authorized person of each Party. Partnership will inform Subcontractor of prospective requirements added by federal or State law or DHCS that apply to the Medi-Cal Contract before the requirements become effective and Subcontractor agrees to comply with the new requirements within thirty (30) calendar days of the new requirements effective date, unless otherwise instructed by DHCS.

   a. Amendments to this Agreement will be submitted to DHCS for approval before use. Proposed changes that are neither approved nor disapproved by DHCS within sixty (60) calendar days after DHCS has acknowledged receipt or within DHCS' estimated date of completion, whichever is later, may be used at Partnership's sole risk and subject to possible subsequent disapproval by DHCS.
   b. In the event a change in law, regulation or the Medi-Cal Contract requires an amendment to this Agreement, Subcontractor's refusal to accept such amendment will constitute reasonable cause for Partnership to terminate this Agreement pursuant to the termination provisions hereof.

5. EXHIBIT C - DATA SHARING AGREEMENT: Agreement for Disclosure and Use of Data and Documents, Section 5 is hereby removed in its entirety and replaced with the following:

   The Parties mutually agree that the following specified Exhibits are part of this Agreement:
   Exhibit C-1 – (Inbound Data)
   Exhibit C-2 – (Outbound Data)

   This Agreement will terminate on December 31, 2024 or on the date Partnership terminates the Community Supports Master Services Agreement, or Delegation Agreement with Napa County, or when the Parties agree the data sharing is no longer needed as part of continuing healthcare operations, as set forth in this Exhibit C, whichever occurs first.

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6. Exhibit E, DHCS Regulatory Requirements, is hereby removed in its entirety and replaced with Exhibit E, Network Provider Medi-Cal Requirements, as set forth in Attachment #1 of this Amendment, is added to the Agreement.

7. Exhibit G, Administrative Subcontractor Medi-Cal Requirements, as set forth in Attachment #2 of this Amendment, is added to the Agreement.

[SIGNATURES ON NEXT PAGE]

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IN WITNESS WHEREOF, the subsequent Amendment between Partnership and Subcontractor is entered into by and between the undersigned parties.

Subcontractor
Napa County

Signature:_____

Printed Name:__Joelle Gallagher_____

Title:__Napa County Board of Supervisors, Chair_____

Date:_____

Partnership
Partnership HealthPlan of California

DocuSigned by:
Signature: Sonja Bjork
10A81AB5333C440...

Printed Name: Sonja Bjork____

Title: Chief Executive Officer_____

Date: 1/11/2024

Approved as to Form:
Napa County Counsel's Office
By: S. Darbinian

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Attachment # 1

Exhibit E
NETWORK PROVIDER
MEDI-CAL REQUIREMENTS

This Exhibit E sets forth the applicable requirements that are mandated by the Medi-Cal Contract, State and Federal laws and regulations and applicable All Plan Letters. Any citations in this Exhibit are to the applicable sections of the Medi-Cal Contract or applicable law. This Exhibit will automatically be modified to conform to subsequent changes in law or government program requirements. In the event of a conflict between this Exhibit and any other provision of the Agreement, this Exhibit will control with respect to Medi-Cal services. Any capitalized term utilized in this Exhibit will have the same meaning ascribed to it in the Agreement unless otherwise set forth in this Exhibit. If a capitalized term used in this Exhibit is not defined in the Agreement or this Exhibit, it will have the same meaning ascribed to it in the Medi-Cal Contract.

1. The parties acknowledge and agree that this Agreement specifies the Covered Services to be ordered, referred, or provided under this Agreement. ((Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.1).)

2. The parties acknowledge and agree that the term of the Agreement, including the beginning and end dates as well as methods of extension, renegotiation, phaseout, and termination, are included in this Agreement. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.2).)

3. The parties acknowledge and agree that this Agreement contains full disclosure of the method and amount of compensation or other consideration to be received by Subcontractor from Partnership. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.3).)

4. This Agreement will be governed by and construed in accordance with all applicable laws and regulations governing the Medi-Cal Contract, including, but not limited to, the Knox-Keene Health Care Services Plan Act of 1975, Health and Safety Code Section 1340 et seq. (unless expressly excluded under the Medi-Cal Contract); 42 CFR section 438.230; 28 CCR Section 1300.43 et seq.; W&I Code Sections 14000 and 14200 et seq.; 22 CCR Sections 53800 et seq.; and 22 CCR Sections 53900 et seq. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.4).)

5. Subcontractor shall comply with all applicable requirements of the DHCS Medi-Cal Managed Care Program, pertaining to the obligations and functions undertaken pursuant to the Agreement. including but not limited to, all applicable federal and State Medicaid and Medi-Cal laws, regulations, sub-regulatory guidance, All Plan Letters, and provisions of the Medi-Cal Contract. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.5).)

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6. Subcontractor must submit to Partnership, either directly or through a designated subcontractor of Partnership, complete, accurate, reasonable, and timely Encounter Data and Provider Data, and any other reports and data as needed by Partnership, in order for Partnership to meet its reporting requirements to DHCS. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.6).)

7. Subcontractor will maintain and make available to DHCS, upon request, copies of all contracts it enters into related to ordering, referring, or rendering Covered Services under this Agreement, and will ensure that all such contracts are in writing. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.7).)

8. Subcontractor agrees to make all of its premises, facilities, equipment, books, records, contracts, computer, and other electronic systems pertaining to the obligations and functions undertaken pursuant to the Agreement, available for the purpose of an audit, inspection, evaluation, examination or copying, as set forth in Medi-Cal Contract, Attachment E, Provision 1.22 (*Inspection and Audit of Records and Faciliites)* as follows:

(a) In accordance with inspections and audits, as directed by DHCS, CMS, Department of Health and Human Services (DHHS) Inspector General, the Comptroller General, Department of Justice (DOJ), Attorney General's Division of Medi-Cal Fraud and Elder Abuse (DMFEA), Department of Managed Health Care (DMHC), DHCS's External Quality Review Organization contractor, or their designees; and

(b) At all reasonable times at Subcontractor's place of business or at such other mutually agreeable location in California. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection A.8).)

9. Subcontractor will maintain all of its books and records, including all Encounter Data, in accordance with good business practices and generally accepted accounting principles for a term of at least ten (10) years from the final date of the Medi-Cal Contract period or from the date of completion of any audit, whichever is later. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection A.9).)

10. Subcontractor shall timely gather, preserve and provide to DHCS, CMS, Attorney General's Division of Medi-Cal Fraud and Elder Abuse (DMFEA), and any authorized State or federal regulatory agencies, any records in Subcontractor's possession, in accordance with the Medi-Cal Contract, Attachment E, Section 1.27 (*Litigation Support*). (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.10).)

11. Subcontractor must assist Partnership as applicable in the transfer of the Member's care as needed, and in accordance with Attachment E, Section 1.17 (*Phaseout Requirements*) of the Medi-Cal Contract, in the event of Medi-Cal Contract termination for any reason. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.11).)

12. Specification that this Agreement will be terminated, or subject to other remedies, if DHCS or Partnership determine that Subcontractor has not performed satisfactorily. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.12).)

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13. Subcontractor will hold harmless both the State and Members in the event Partnership cannot or will not pay for Covered Services ordered, referred, or rendered by Subcontractor pursuant to this Agreement. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.13).)

14. Subcontractor shall not bill a Member for Medi-Cal Covered Services. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.14).)

15. Partnership will inform Subcontractor of prospective requirements added by federal or State law or DHCS related to the Medi-Cal Contract that impact obligations and functions undertaken pursuant to the Agreement before the requirement is effective, and Subcontractor agrees to comply with the new requirements within 30 calendar days of the effective date, unless otherwise instructed by DHCS. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.15).)

16. Subcontractor must ensure that cultural competency, sensitivity, Health Equity, and diversity training is provided for Subcontractor's staff at key points of contact with Members. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.16).)

17. Subcontractor must provide interpreter services for Members and comply with language assistance standards developed pursuant to H&S Code section 1367.04. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.17).)

18. Subcontractor must notify Partnership within ten Working Days of any suspected Fraud, Waste, or Abuse and agrees that Partnership can share such information with DHCS in accordance with Attachment A, Attachment III, Subsection 1.3.2.D (*Contractor's Reporting Obligations*) and Subsection 1.3.2.D.6 (*Confidentiality*). (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.18).)

19. Subcontractor must report to Partnership, when it has received an Overpayment; return the Overpayment to Partnership, within 60 calendar days of the date the Overpayment was identified; and notify Partnership in writing of the reason for the Overpayment in accordance with Attachment A, Attachment III, Subsection 1.3.6 (*Treatment of Overpayment Recoveries*) and 42 CFR section 438.608(d)(2). (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.19).)

20. The parties confirm Subcontractor's right to all protections afforded to Subcontractor under the Health Care Providers' Bill of Rights, as set forth in Health and Safety Code Section 1375.7, including, but not limited to, Subcontractor's right to access Partnership's dispute resolution mechanism and submit a grievance pursuant to Health and Safety Code Section 1367(h)(1). (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.6, Subsection A.20).)

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21. To the extent applicable, Subcontractor must comply with 22 CCR sections 53866, 53220, and 53222 with regard to the submission and recovery of claims for services provided under the Medi-Cal Contract. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.3.6.)

22. Subcontractor agrees to receive training from Partnership and receive notice from Partnership of any changes to Partnership's Grievance and Appeals policies and procedures. (Medi-Cal Contract, Attachment A, Attachment III, Provision 4.6, Subsection I.)

23. Subcontractor must maintain grievance logs that include all required information set forth in 42 CFR section 438.416 and 22 CCR section 53858(e). Subcontractor must submit those grievance logs to Partnership so Partnership can meet its reporting obligations to DHCS. (Medi-Cal Contract, Attachment A, Attachment III, Provision 4.6.8, Subsection A.)

24. Subcontractor agrees to comply with the network adequacy and network ratio requirements per the Medi-Cal Contract. In the event Subcontractor fails to meet network adequacy standards as set for in APL 21-006, Partnership shall impose a corrective action plan and issue sanctions. (Medi-Cal Contract, Attachment A, Attachment III, Provision 5.2.13, Subsection D.)

25. This Agreement and any amendment thereto will become effective only upon approval by DHCS in writing, or by operation of law where DHCS has acknowledged receipt of the Agreement, and has failed to approve or disapprove the proposed Agreement with sixty (60) calendar days of receipt, as set forth in in the Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.2, Subsection A.2).)

26. This Agreement and all information received from Subcontractor in accordance with the requirements under the Medi-Cal Contract shall become public record on file with DHCS, except as specifically exempted in statute. The names of the officers and owners of Subcontractor, stockholders owning more than 5 percent of the stock issued by Subcontractor and major creditors holding more than 5 percent of the debt of Subcontractor will be attached to the Agreement at the time the Agreement is presented to DHCS. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.12,; Welfare & Institutions Code 14452.)

27. Subcontractor shall notify Partnership and DHCS within ten (10) calendar days of discovery that any third party may be liable for reimbursement to Partnership and/or DHCS for Covered Services provided to a Plan Member, such as for treatment of work related injuries or injuries resulting from tortious conduct of third-parties. Subcontractor is precluded from receiving duplicate payments for Covered Services provided to Plan Members. If this occurs, Subcontractor may not retain the duplicate payment. Once the duplicate payment is identified, Subcontractor must reimburse Partnership. If Subcontractor fails to refund the duplicate payment, Partnership may offset payments made to Subcontractor to recoup the funds. (APL 21-007; Welfare & Institutions Code 14124.70 – 14124.791). Notice shall be provided to DHCS in accordance with Attachment E, Provision 1.26, Subsection C of the Medi-Cal Contract.

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28. Subcontractor will immediately report to Partnership the discovery of a security incident, breach or unauthorized access of Medi-Cal Member protected health information (as defined in 45 CFR 160.103) or personal information (as defined in California Civil Code Section 1798.29). (Medi-Cal Contract, Attachment G.)

29. Subcontractor agrees to provide Partnership with the disclosure statement set forth in 22 CCR 51000.35, prior to commencing services under this Agreement. This Agreement and all information received from Subcontractor in accordance with the subcontract requirements under the Medi-Cal Contract shall become public record on file with DHCS, except as specifically exempted in statute. The names of the officers and owners of Subcontractor, stockholders owning more than 5 percent of the stock issued by Subcontractor and major creditors holding more than 5 percent of the debt of Subcontractor will be attached to the Agreement at the time the Agreement is presented to DHCS. (Medi-Cal Contract, Attachment A, Attachment III, Provision 3.1.12.)

30. Subcontractor must be enrolled (and maintain enrollment) in the Medi-Cal Program through DHCS in accordance with its provider type. Subcontractor shall provide verification of enrollment as well as a copy of the executed Medi-Cal Provider Agreement (DHCS Form 6208) between Subcontractor and DHCS, if applicable. In the event Partnership assisted Subcontractor with the enrollment process, Subcontractor consents to allow DHCS and Partnership share information relating to the Subcontractor application and eligibility, including but not limited to issues related to program integrity. Subcontractor's enrollment documentation must be made available to DHCS, CMS or other authorized Governmental Agencies upon request. (APL 22-013; 42 CFR 438.602(b).)

31. Subcontractor, and Subcontractor's employees, officers and directors, shall comply with the conflict of interest requirements set forth in Attachment H of the Medi-Cal Contract. (Medi-Cal Contract, Attachment H, Provision A.)

32. Subcontractor must make available to Members the clinical criteria used in assessing Medical Necessity for Covered Services. (Medi-Cal Contract, Attachment A, Attachment III, Provision 2.3, Subsection E.)

33. Subcontractor must have systems in place to track and monitor referrals requiring prior authorization and must furnish documentation of such referrals to Partnership and DHCS upon request. (Medi-Cal Contract, Attachment A, Attachment III, Provision 2.3, Subsection H.)

34. Subcontractor represents and warrants that Subcontractor and its affiliates are not debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued under Executive Order No. 12549 or guidelines implementing Executive Order No. 12549. Further, Subcontractor represents and warrants that Subcontractor is not excluded from participation in any health care program under section 1128 or 1128A of the Social Security Act. (42 CFR 438.610.)

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35. For purposes of this provision, "Emergency" means unforeseen circumstances that require immediate action or assistance to alleviate or prevent harm or damage caused by public health crises, natural and man-made hazards, or disasters.

a. Subcontractor shall annually submit evidence of adherence to CMS Emergency Preparedness Final Rule 81 FR 63859 to Partnership;
b. Subcontractor shall advise Partnership as part of the Emergency Plan; and
c. Subcontractor shall notify Partnership within 24 hours of an Emergency if Subcontractor closes down, is unable to meet the demands of a medical surge, or is otherwise affected by an Emergency. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 6.3, Subsection C.3).)

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ATTACHMENT #2

EXHIBIT G
ADMINISTRATIVE SUBCONTRACTOR
MEDI-CAL REQUIREMENTS

This Exhibit G sets forth the applicable requirements that are mandated by the Medi-Cal Contract, State and Federal laws and regulations and applicable All Plan Letters as Subcontractor is a contracted Network Provider that is delegated certain functions by Parntership and therefore, constitutes an Administrative Subcontractor. Any citations in this Exhibit are to the applicable sections of the Medi-Cal Contract or applicable law. This Exhibit will automatically be modified to conform to subsequent changes in law or government program requirements. In the event of a conflict between this Exhibit and any other provision of the Agreement, this Exhibit will control with respect to Medi-Cal services. Any capitalized term utilized in this Exhibit will have the same meaning ascribed to it in the Agreement unless otherwise set forth in this Exhibit. If a capitalized term used in this Exhibit is not defined in the Agreement or this Exhibit, it will have the same meaning ascribed to it in the Medi-Cal Contract.

1. The parties acknowledge and agree that this Agreement specifies Partnership's obligations and functions undertaken by Subcontractor. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.1).)

2. The parties acknowledge and agree that the term of the Agreement, including the beginning and end dates as well as methods of extension, renegotiation, phaseout, and termination, are included in this Agreement. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.2).)

3. The parties acknowledge and agree that this Agreement contains full disclosure of the method and amount of compensation or other consideration to be received by Subcontractor from Partnership. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.3).)

4. The parties acknowledge that this Agreement and any amendments thereof shall become effective only upon approval by DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.4) and Provision 3.1.2, Subsection B.1).)

5. Subcontractor agrees that assignment or delegation of the Agreement will be void unless prior written approval is obtained from DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.5).)

6. This Agreement will be governed by and construed in accordance with all applicable laws and regulations governing the Medi-Cal Contract, including, but not limited to, 42 CFR Section 438.230, the Knox-Keene Act, Health & Safety Code Section 1340 et seq. (unless expressly excluded under the Medi-Cal Contract); 28 CCR Section 1300.43 et seq.; W&I

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Code Sections 14000 et seq.; 22 CCR Sections 53800 et seq.; and 22 CCR Sections 53900 et seq. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.7).)

7. Subcontractor must comply with all applicable requirements of the Medi-Cal Program, pertaining to the obligations and functions undertaken pursuant to the Agreement, including but not limited to, all applicable Medicaid and Medi-Cal laws, regulations, sub-regulatory guidance, APLs, and the provisions of the Medi-Cal Contract. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.8).)

8. To the extent Subcontractor is assuming risk for emergency services, Subcontractor shall comply with Exhibit A, Attachment III, Provision 3.3.16 of the Medi-Cal Contract, (*Emergency Services and Post-Stabilization Care Services*), when paying providers for emergency services. (Medi-Cal Contract,, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.9) and Provision 3.3.16.)

9. Subcontractor must submit to Partnership, complete, accurate, reasonable, and timely Encounter Data and Provider Data, and any other reports and data as needed by Partnership, in order for Partnership to meet its reporting requirements to DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.10).)

10. Subcontractor will comply with all monitoring provisions in the Medi-Cal Contract and any monitoring requests by DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.11).)

11. Subcontractor agrees it will maintain and make available to DHCS, upon request, copies of all contracts it enters related to the performance of the obligations and functions it undertakes pursuant to the Agreement, and to ensure that such contract are in writing. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.12).)

12. Subcontractor agrees to make all of its premises, facilities, equipment, books, records, contracts, computer, and other electronic systems pertaining to the obligations and functions undertaken pursuant to the Agreement, available for the purpose of an audit, inspection, evaluation, examination or copying, including but not limited to Access Requirements and State's Right to Monitor, as set forth in Medi-Cal Contract, Exhibit E, Provision 1.22 (*Inspection and Audit of Records and Faciliites)* as follows:

> (a) In accordance with inspections and audits, as directed by DHCS, CMS, Department of Health and Human Services (DHHS) Inspector General, the Comptroller General, Department of Justice (DOJ), Department of Managed Health Care (DMHC), or their designees; and

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(b) At all reasonable times at Subcontractor's place of business or at such other mutually agreeable location in California. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.13).)

13. Subcontractor will maintain all of its books and records, including Encounter Data, in accordance with good business practices and generally accepted accounting principles for a term of at least ten (10) years from the final date of the Medi-Cal Contract period or from the date of completion of any audit, whichever is later. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.14).)

14. Subcontractor shall timely gather, preserve and provide to DHCS, CMS, DMFEA, and any authorized State or federal regulatory agencies, any records in Subcontractor's possession, in accordance with the Medi-Cal Contract, Exhibit E, Provision 1.27 (*Litigation Support*). (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.15).)

15. Subcontractor must assist Partnership in the transfer of Member's care as needed, and in accordance with Exhibit E, Provision 1.17 (*Phaseout Requirements*) of the Medi-Cal Contract in the event of this Agreement or the Medi-Cal Contract termination for any reason. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.16).)

16. Subcontractor agrees to notify DHCS in the event this Agreement is amended or terminated for any reason. Notice is considered given when properly addressed and deposited in the United States Postal Service as first-class registered mail, postage attached to the address listed below, or when sent via email to DHCS at the email address designated by DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.17).)

Department of Health Care Services
Managed Care Operations Division
MS 4407
P.O. Box 997413
Sacramento, CA 95899-7413
Attention: DHCS Contract Manager

17. Subcontractor agrees to hold harmless both the State and members in the event Partnership cannot or will not pay for obligations and functions undertaking pursuant to this Agreement. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.18).)

18. Subcontractor must participate and cooperate in Partnership's Quality Improvement System. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.19).)

19. To the extent Partnership delegates Quality Improvement (QI) or Health Equity (as defined in the Medi-Cal Contract) functions and responsibilities to Subcontractor, the parties agree that they will enter into a Delegation Agreement that includes those provisions stipulated in Exhibit A, Attachment III, Subsection 2.2.5 (*Subcontractor and Downstream Subcontractor*

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QI Activities) of the Medi-Cal Contract. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.20).)

20. To the extent Subcontractor is undertaking coordination of care obligations and functions for Members, Partnership will share any relevant utilization data that DHCS has provided to Subcontractor. Subcontractor agrees that such utilization data will be used solely for the purpose of Member care coordination. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.21).)

21. Partnership will inform Subcontractor of prospective requirements added by federal or State law or DHCS related to the Medi-Cal Contract that impact obligations and functions undertaken pursuant to the Agreement before the requirement is effective, and Subcontractor agrees to comply with the new requirements within 30 calendar days of the effective date, unless otherwise instructed by DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.22).)

22. Subcontractor must ensure that cultural competency, sensitivity, Health Equity, and diversity training is provided for Subcontractor's staff at key points of contact with Members. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.24).)

23. To the extent Subcontractor communicates with Members, Subcontractor must provide interpreter services for Members and comply with the language assistance standards pursuant to Health & Safety Code section 1367.04. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.25).)

24. Subcontractor must notify Partnership within ten working days of any suspected Fraud, Waste, or Abuse. Subcontractor agrees that Partnership can share such information with DHCS in accordance with Exhibit A, Attachment III, Subsection 1.3.2.D (*Contractor's Reporting Obligations*) and Subsection 1.3.2.D.6) (*Confidentiality*) of the Medi-Cal Contract. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.26).)

25. Subcontractor must report directly to Partnership when it has received an overpayment; return the overpayment to Partnership within 60 calendar days after the date the overpayment was identified; and notify Partnership in writing of the reason for the overpayment (42 CFR Section 438.608(d)(2)). (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.27).)

26. Subcontractor shall comply with Partnership's reporting obligations under the Medi-Cal Contract in accordance with 42 CFR Section 438.230(c)(1)(ii) with respect the obligations and functions undertaken pursuant to this Agreement. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.28).)

27. Subcontractor agrees and acknowledges that DHCS is a direct beneficiary of the Agreement with respect to all obligations and functions undertaken pursuant to this Agreement

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and that DHCS may directly enforce any and all provisions of the Agreement. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.29).)

28. Subcontractor agrees to provide Partnership with the disclosure statement set forth in 22 CCR Section 51000.35, prior to commencing services under this Agreement. This Agreement and all information received by DHCS in accordance with this Agreement by DHCS shall become public record on file with DHCS, except as specifically exempted in statute. The names of the officers and owners of Subcontractor, stockholders owning more than 5 percent of the stock issued by Subcontractor and major creditors holding more than 5 percent of the debt of Subcontractor will be attached to the Agreement at the time the Agreement is presented to DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.12).)

29. Subcontractor's employees, officers and directors, shall comply with the conflict of interest requirements set forth in Exhibit H of the Medi-Cal Contract. (Medi-Cal Contract, Exhibit H, Provision A).)

30. Subcontractor agrees to comply with the network adequacy and network ratio requirements per the Medi-Cal Contract. In the event Subcontractor fails to meet network adequacy standards as set for in APL 21-006, Partnership shall impose a corrective action plan and issue sanctions. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 5.2.13, Subsection D.)

31. Subcontractor agrees that in the event Subcontractor delegates its obligations and functions undertaken pursuant to this Agreement to a third party, the third party will be a Downstream Subcontractor. Subcontractor must enter into a written agreement with the Downstream Subcontractor and ensure that the Downstream Subcontractor will comply with this Agreement and all of the Applicable Requirements in the Medi-Cal Contract, including but not limited to, those set forth in Exhibit A, Attachment III, Provisions 3.1.1 and 3.1.6. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.1, Subsection B, and Provision 3.1.6, Subsection B.)

32. Subcontractor agrees to inform any Downstream Subcontractors taking on delegated functions of prospective requirements added by federal or State law or DHCS related to this Agreement that impact obligations and functions undertaken pursuant to the Subcontract before the requirement is effective, and ensure those Downstream Subcontractors comply with the new requirements within 30 calendar days of the effective date, unless otherwise instructed by DHCS. (Medi-Cal Contract, Exhibit A, Attachment III, Provision 3.1.6, Subsection B.23).)

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-26

TO: Board of Supervisors

FROM: Christine Briceño, Director of Human Resources

REPORT BY: Joy Cadiz, Staff Services Manager

SUBJECT: Adoption of a Resolution Amending the Table and Index of Classes to Increase the Compensation of the Board of Supervisors

RECOMMENDATION

Adopt a Resolution to amend the Table and Index of Classes to reflect a salary increase for members of the Board of Supervisors, effective July 1, 2023, as authorized by Napa County Ordinance No. 1263. (Fiscal Impact, $18,500 annual expense; General Fund; Budgeted; Mandatory)

BACKGROUND

On December 1, 1998, the Board of Supervisors adopted Ordinance No.1148 establishing the compensation to be paid to members of the Board of Supervisors. On June 15, 2005, the Board of Supervisors approved Ordinance No. 1263, which set the salary of members of the Board of Supervisors equal to 47.09% of the salary of Judges of the Superior Court. When the Judges of the Superior Court receive a salary increase, members of the Board also receive the increase to maintain the 47.09% ratio.

On August 10, 2023, the County received notification that Judges of the Superior Court received a 0.53% salary adjustment effective July 1, 2023. In September 2023, the Table and Index of Classes was amended effective July 1, 2023, to reflect the 0.53% salary adjustment. On December 19, 2023, the County received notice that Judges of the Superior Court received an additional 2.63% for a total salary adjustment of 3.16% effective July 1, 2023. It is now necessary to amend the Table and Index of Classes to reflect the appropriate salary increase retroactive to July 1, 2023. Section 2.100.270 of the Napa County Code provides that changes to the Table and Index shall be established by Resolution.

FISCAL IMPACT

Is there a Fiscal Impact? Yes

Is it currently budgeted?	Yes
Where is it budgeted?	10100-00
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	The proposed Resolution increases salary costs by $14,350 annually ($2,870 per Supervisor) and benefits by $4,150 annually and will be included in future budgets.
Consequences if not approved:	If this Resolution is not adopted, the County would be in violation of the County Code, which mandates the increased compensation for members of the Board of Supervisors.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

RESOLUTION NO. 2024-

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AMENDING THE TABLE AND INDEX OF CLASSES, EFFECTIVE JULY 1, 2023.

WHEREAS, California Constitution Article 11 Section 1(b) provides that the Board of Supervisors shall prescribe the compensation of its members by ordinance; and

WHEREAS, on June 15, 2005, the Board of Supervisors approved Ordinance No. 1263, setting the salary of members of the Napa County Board of Supervisors as equal to 47.09% of the salary of the Superior Court Judges; and

WHEREAS, on December 19, 2023, the County received notification that the Superior Court Judges received a salary increase of 3.16% effective July 1, 2023; and

WHEREAS, pursuant to Ordinance No. 1263, the members of the Napa County Board of Supervisors must also receive a salary increase;

WHEREAS, pursuant to Napa County Code Section 2.100.270, the Table reflecting the salary received by the members of the Board of Supervisors must be adjusted accordingly by resolution of the Board of Supervisors; and

WHEREAS, the Director of Human Resources recommends that the proposed changes to the Table and Index, as set forth in Exhibit "A," for members of the Board of Supervisors effective July 1, 2023.

NOW, THEREFORE, BE IT RESOLVED, that the Napa County Board of Supervisors hereby approves the salary increase for the members of the Board of Supervisors pursuant to Ordnance No. 1362 and hereby approves changes to the Table and Index, reflecting that salary increase as set forth in Exhibit "A," effective July 1, 2023.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 23rd day of January 2024, by the following vote:

AYES: SUPERVISORS _____

_____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: *Susan B. Altman*, Deputy Date: December 29, 2023	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____

EXHIBIT A

Director of Human Resources requests approval of the following actions, effective July 1, 2023:

Amend the Table and Index as follows:

Delete: Board of Supervisors (NC)
$52.61 (approximate hourly rate)

Add: Board of Supervisors (NC)
$53.99 (approximate hourly rate)

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-63

TO: Board of Supervisors

FROM: Christine Briceño, Director of Human Resources

REPORT BY: Joy Cadiz, Staff Services Manager

SUBJECT: Adoption of a Resolution Amending the Departmental Allocation List for Planning, Building, and Environmental Services

RECOMMENDATION

Adopt a Resolution to amend the Departmental Allocation List for the Planning, Building, and Environmental Services Department. (Fiscal Impact: $20,737 annual expense; Building Inspection Fund; Budgeted; Discretionary)

BACKGROUND

The Planning, Building, and Environmental Services (PBES) Department supports seven advisory bodies, including the Planning Commission, Airport Land Use Committee, Climate Action Committee, Zoning Administrator, Technical Advisory Group, Watershed Information and Conservation Council, and Drought Water Shortage Taskforce, along with several joint and ad-hoc meetings. The Administrative Secretary series (I and II) are classifications which can fulfill the clerk functions required to support these advisory bodies. Currently, the Administrative Secretary II allocation in being underfilled by a lower-level classification. To maintain appropriate levels of the clerking function, as well as other administrative support duties assigned to the team, PBES is requesting that a vacant Office Assistant II position be reallocated to an Administrative Secretary I classification.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	21400-00
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification	An Administrative Secretary I is an appropriate classification to perform the required clerk duties related to the Brown Act which governs the official proceedings of commissions, committees, and boards.

Is the general fund affected?	Yes
Future fiscal impact:	The increased cost of salary and benefits for the remainder of the fiscal year is approximately $8,774. The annualized cost of salary and benefits is approximately $20,737 and will be budgeted for accordingly.
Consequences if not approved:	Necessary clerk duties of several County commissions, committees, or boards will not be performed.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

RESOLUTION NO. 2024-

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AMENDING THE DEPARTMENTAL ALLOCATION LIST FOR THE PLANNING, BUILDING, AND ENVIRONMENTAL SERVICES DEPARTMENT, EFFECTIVE JANURY 23, 2024.

WHEREAS, Government Code section 25300 provides that the Board of Supervisors shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees and that such action may be taken by ordinance or resolution; and

WHEREAS, Napa County Code section 2.100.280 provides that the Board of Supervisors establishes the number of positions and classifications in the Departmental Allocation List by resolution; and

WHEREAS, the Director of Human Resources recommends that the proposed changes to the Table and Index of Classes, the Departmental Allocation List for the Planning, Building, and Environmental Services Department, be implemented as set forth in Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED, that effective January 23, 2024, the Napa County Board of Supervisors hereby approves the changes to the Table and Index of Classes and the Departmental Allocation List for the Planning, Building, and Environmental Services Department, as set forth in Exhibit "A."

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 23rd day of January 2024, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By*: Susan B. Altman,* Deputy Date: December 29, 2023	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

EXHIBIT A

Director of Human Resources requests approval of the following actions, effective January 23, 2024:

1. Amend the Departmental Allocation List as follows:

Department	Budget Unit	Position Control #	Class Title	Effective Date	Change
Planning, Building, and Environmental Services	21400-00	1010110	Office Assistant II	1/23/24	-1.0
Planning, Building, and Environmental Services	21400-00	NEW	Administrative Secretary I	1/23/24	+1.0

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-88

TO: Board of Supervisors

FROM: Christine Briceño, Director of Human Resources

REPORT BY: Joy Cadiz, Staff Services Manager

SUBJECT: Amend the Table and Index of Classes and Departmental Allocation List for the County Executive Office

RECOMMENDATION

Adopt a Resolution to amend the Table and Index of Classes, the Departmental Allocation List for the County Executive Office, and appropriate personnel policies. (Fiscal Impact: $19,287 annually; General Fund; Budgeted; Discretionary)

BACKGROUND

Human Resources reviewed a reclassification request from the Administrative Manager/Clerk of the Board and determined that the classification specification required updates to align with the current responsibilities of the position. A retitling of the classification from Administrative Manager/Clerk of the Board to Clerk of the Board is a result of the updates to the classification specification.

The salary for this position is appropriately set when compared and banded to another position, which is consistent with management compensation practices.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	10200-00
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification	Banding this management classification for salary setting purposes is appropriate.
Is the general fund affected?	Yes

Future fiscal impact:	The increased cost of salary and benefits for the remainder of the fiscal year is approximately $7,418. The annualized cost of salary and benefits is approximately $19,287 and will be budgeted for accordingly.
Consequences if not approved:	This classification will not be more appropriately compensated.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

RESOLUTION NO. 2024-

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AMENDING THE TABLE AND INDEX OF CLASSES, THE DEPARTMENTAL ALLOCATION LIST FOR THE COUNTY EXECUTIVE OFFICE, AND APPROPRIATE PERSONNEL POLICIES, EFFECTIVE FEBRUARY 3, 2024.

WHEREAS, Government Code section 25300 provides that the Board of Supervisors shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees and that such action may be taken by ordinance or resolution; and

WHEREAS, section 2.100.270 of the Napa County Code provides that the "Table and Index" may be amended from time to time by resolution of the Board of Supervisors; and

WHEREAS, section 2.100.280 of the Napa County Code provides that the number of positions and classifications in the Departmental Allocation List shall be established from time to time by resolution of the Board of Supervisors; and

WHEREAS, the Director of Human Resources recommends that the proposed changes to the Table and Index of Classes and Department Allocation List for the County Executive Office, as set forth in Exhibit "A," be implemented.

NOW, THEREFORE, BE IT RESOLVED, that the Napa County Board of Supervisors hereby approves the changes to the Table and Index of Classes and Department Allocation List for the County Executive Office, as set forth in Exhibit "A," effective February 3, 2024.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 23rd day of January 2024, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By*: Susan B. Altman,* Deputy Date: January 8, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

EXHIBIT A

Director of Human Resources requests approval of the following actions, effective February 3, 2024:

1. Amend the Table and Index of Classes as follows:

    a. Delete:

    Admin Mgr/Clerk of the Board (CNCO)
    $56.28 - $68.23 (approximate hourly CNCO Grade 344)

    b. Add:

    Clerk of the Board (CNCO)
    $61.97 - $75.15 (approximate hourly – CNCO Grade 346)

2. Amend the Departmental Allocation List as follows:

Department	Budget Unit	Position Control #	Class Title	Effective Date	Change
County Executive Office	10200-00	1010264	Admin Mgr/Clerk of the Board	02/03/2024	-1.00
County Executive Office	10200-00	1010264	Clerk of the Board	02/03/2024	+1.00

3. Amend Part I: Section 37C-3 of the Napa County Policy Manual, Management Compensation Plan – Management Non-Classified (Other), by deleting Administrative Manager/Clerk of the Board from Attachment 1, Part A.

4. Amend Part I: Section 37C-3 of the Napa County Policy Manual, Management Compensation Plan – Management Classified, by adding Clerk of the Board to Attachment 1, Part A.

5. Amend Part I: Section 37A of the Napa County Policy Manual, Employer-Employee Relations Policy, by deleting Administrative Manager/Clerk of the Board to the List of Management Classes.

6. Amend Part I: Section 37A of the Napa County Policy Manual, Employer-Employee Relations Policy, by adding Clerk of the Board to the List of Management Classes.

7. Amend Part I: Section 37B of the Napa County Policy Manual, Overtime Policy, by deleting Administrative Manager/Clerk of the Board from the List of Classes Exempt from Overtime.

8. Amend Part I: Section 37B of the Napa County Policy Manual, Overtime Policy, by adding Clerk of the Board to the List of Classes Exempt from Overtime.

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-138

TO: Board of Supervisors

FROM: Christine Briceño, Director of Human Resources

REPORT BY: Joy Cadiz, Staff Services Manager

SUBJECT: Amend the Departmental Allocation List for Housing & Homeless Services

RECOMMENDATION

Adopt a Resolution to amend the Departmental Allocation List for Housing & Homeless Services effective January 23, 2024, with a net increase of 1.0 full-time equivalent and a Budget Amendment increasing Housing and Homeless Division appropriations by $87,000 from Affordable Housing Fund available fund balance. (Fiscal Impact: $170,000 annually; BAHFA Grant Funding; Not Budgeted; Discretionary)

[4/5 vote required]

BACKGROUND

On September 12, 2023, the Board of Supervisors directed staff to apply for and, if awarded, accept the Bay Area Housing Finance Authority (BAHFA) Older Adult Rental Assistance Pilot Program grant funding. These funds are awarded to prevent homelessness and improve long-term housing stability for extremely low income, severely housing-burdened, older adult residents in the County.

The pilot program design submitted in the application includes several new positions to be funded using the BAHFA funds and existing grant sources in a braided structure. The new positions include a 1.0 FTE Staff Services Analyst I/II position to provide necessary support for the administration requirements of the grant, and 4.0 FTE Case Manager positions within program delivery and social supports. The 4.0 FTE Case Managers will be funded via contract and staffed within collaborative applicant partner agencies (On the Move and Up Valley Family Center) based on the proportion of program enrollees across the geographic distribution of the County.

Requested Actions:

1. Adopt a resolution to amend the Departmental Allocation List for the Housing and Homeless Division

effective January 23, 2024, with a net increase of 1.0 full-time equivalent Staff Services Analyst I/II.

2. Approve an increase in budget appropriations for salaries and benefits in the amount of $83,000 within the General Fund, Fund 1000, Housing and Homeless Division 10215, offset by Transfers-In Account 48200.

3. Approve an increase in budget appropriations by $4,000 within the Housing & Homeless Services Fund 2030, Subdivision 2030000, Computer Equipment 53410, offset by Intrafund Transfers-In Account 49900.

4. Approve an increase in budget appropriations by $83,000 within the Housing & Homeless Services Fund 2030, Subdivision 2030000, Transfers-Out 56100, offset by Intrafund Transfers-In Account 49900.

5. Approve an increase in budget appropriations by $87,000 within the Housing &Homeless Services Fund 2030, Subdivision 2030010, Intrafund Transfers-Out 57900, offset by use of fund balance.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	Housing and Homeless Fund 2030
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The grant funds expand critical support to the older adult population
Is the general fund affected?	No
Future fiscal impact:	The cost of salary and benefits for the remainder of the fiscal year is approximately $83,000. The annualized cost of salary and benefits is approximately $166,000 and will be budgeted for accordingly in future fiscal years.
Consequences if not approved:	The County will be in violation of the grant application and terms of the award.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Click or tap here to enter text.

RESOLUTION NO. 2024-

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AMENDING THE DEPARTMENTAL ALLOCATION LIST FOR HOUSING & HOMELESS SERVICES, EFFECTIVE JANURY 23, 2024.

WHEREAS, Government Code section 25300 provides that the Board of Supervisors shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees and that such action may be taken by ordinance or resolution; and

WHEREAS, Napa County Code section 2.100.280 provides that the Board of Supervisors establishes the number of positions and classifications in the Departmental Allocation List by resolution; and

WHEREAS, the Director of Human Resources recommends that the proposed changes to the Table and Index of Classes, the Departmental Allocation List for Housing & Homeless Services, be implemented as set forth in Exhibit "A."

NOW, THEREFORE, BE IT RESOLVED, that effective January 23, 2024, the Napa County Board of Supervisors hereby approves the changes to the Table and Index of Classes and the Departmental Allocation List for Housing & Homeless Services, as set forth in Exhibit "A."

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 23rd day of January 2024, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____
JOELLE GALLAGHER, Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By*: Susan B. Altman,* Deputy Date: January 9, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

EXHIBIT A

Director of Human Resources requests approval of the following actions, effective January 23, 2024:

1. Amend the Departmental Allocation List as follows:

Department	Budget Unit	Position Control #	Class Title	Effective Date	Change
Housing & Homeless Services	10215-00	NEW	Staff Services Analyst I/II	1/23/24	+1.0

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 23-2058

TO: Board of Supervisors

FROM: Anthony Halstead - Library Director

REPORT BY: Michelle Carreon - Staff Services Analyst

SUBJECT: Reporting of donations received by the Napa County Library, October 1, 2023, through December 31, 2023, and acceptance of a donation

RECOMMENDATION

Accept and file the quarterly report of donations in the amount of $2,000 or less gifted to Library from October 1, 2023, through December 31, 2023, and authorization to accept a donation in the amount of $3,000 from the Rasmussen Family Fund. (Fiscal Impact, $3,000; Napa County Library Fund 2020; Budgeted; Discretionary)

BACKGROUND

Board of Supervisors adopted the Napa County Library policy, Section 29 authorizing the Library Director to accept on behalf of the Napa County Library donations in the amount of $2,000 or less, and up to $10,000 by Friends of the Library groups to support existing Library services and programs. Today, the Director of Library Services and Community Outreach is reporting donations received during the second quarter of fiscal year 2023 -2024 in the amount of $1,302.60.

On December 11, 2023, the Library received a donation in the amount of $3,000 from the Rasmussen Family Fund, a Donor advised Fund of Napa Valley Community Foundation. The donation is for the Napa County Library Literacy Center. The donation will help fund literacy projects and programs at the Napa County Library. Staff requests acceptance of the donation and authorization for the Chair to sign the attached letter of appreciation. Donations are deposited into the Napa County Fund accordingly, and will be used to support ongoing services, projects, and programs.

Requested actions:

1. Board to accept and instruct the Clerk of the Board to file the quarterly report of donations in the amount of $2,000 or less gifted to Library from October 1, 2023, through December 31, 2023;
2. Authorization to accept a donation in the amount of $3,000 from the Rasmussen Family Fund; and

3. Chair to sign a letter of appreciation in acceptance of the donation.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Napa County Library Fund 2020, subdivision 2020005
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Deposit of donations into the specified library location budget will facilitate fiscal monitoring and ensure that donation spending will be consistent with the intent of the donors.
Is the general fund affected?	No
Future fiscal impact:	None. Donated funds will be utilized in the current fiscal year.
Consequences if not approved:	If the requested action is not approved, the library will not be able to accept the $3,000 donation to help fund literacy projects and programs provided to the community at the Napa County Library.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Date	Description	Amount
10/06/2023	Napa Donation	$ 5.00
10/25/2023	Napa Donation	$ 0.60
11/09/2023	Childrens Trust Dep	$ 25.00
11/17/2023	Napa Donation	$ 0.60
11/30/2023	H Spitz Donation	$ 1,000.00
12/05/2023	Literacy Donation PVBC	$ 65.00
12/06/2023	Childrens Trust Donation	$ 200.00
12/12/2023	Napa Donation	$ 1.00
12/15/2023	Napa Donation	$ 5.00
12/26/2023	Napa Donation	$ 0.10
12/26/2023	Napa Donation	$ 0.30
		$ 1,302.60

A Tradition of Stewardship
A Commitment to Service

Board of Supervisors

1195 Third St.
Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4421

Joelle Gallagher
Chair

January 23, 2024

Rasmussen Family Fund
Napa Valley Community Foundation
3299 Claremont Way, Suite 2
Napa, CA 94558-3385

Dear members of the Rasmussen Family Fund and the Napa Valley Community Foundation,

Thank you for your recent donation of $3,000 to purchase books and outreach materials for the adult literacy program at the Napa County Library.

It is the goal of the library to enrich the lives of community members with books and information. Your ongoing support provides staff the ability to reach a large demographic of County residents, which allows the library to make a meaningful impact within the community.

Thank you for your continuing support.

Regards,

Joelle Gallagher
Chair

Joelle Gallagher District 1 | **Ryan Gregory** District 2 | **Anne Cottrell** District 3 | **Alfredo Pedroza** District 4 | **Belia Ramos** District 5

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-33

TO: Board of Supervisors

FROM: Amanda Gibbs, Chief Probation Officer

REPORT BY: Ferlyn Buenafe, Probation Administrative Manager

SUBJECT: Agreement with Ryan Dunnigan, Psychologist

RECOMMENDATION

Approve and authorize Agreement No. 240248B with Dr. Ryan Dunnigan, for a maximum of $18,000 annually for the term January 1, 2024 to June 30, 2025, with the provision of two automatic annual renewals, to provide mandated pre-employment psychological and arming evaluation services, return to duty/fitness psychological evaluations, and individual post-incident debriefing sessions. (Fiscal Impact: $18,000; General Fund 1000, Division 1420; Not Budgeted; Mandatory)

BACKGROUND

Probation conducts psychological screening examinations for sworn personnel candidates as a required step in the peace officer selection process. Dr. Dunnigan would conduct psychological screening examinations at the County's request. The screening examinations consist of the following components: 1) extensive psychological testing of the candidate; 2) clinical interview; 3) review of candidate's history and psycho-social history; 4) psychological suitability; and 5) thorough written report to Probation with a summary of the result for each evaluation.

Each report includes a discussion of background issues, emotional or mental condition that may adversely affect the candidate's exercise of the job duties and that of an officer in consideration to be armed. In addition, Dr. Dunnigan would perform Fitness-for-Duty evaluations and post-incident debriefing sessions or return-to-work sessions. The debriefing sessions follow any critical incident or concerning event Probation feels could necessitate the need for a follow-up counseling session and provide recommendations, concerns, and feedback to support resiliency and wellbeing of the individual.

Dr. Dunnigan is a licensed Clinical-Forensic Psychologist specializing in Policy and Public Safety Psychology. He has expertise in both clinical and forensic evaluations, as well as in the assessment of normal personality characteristics, skills, and abilities relevant to personnel selection. He bases his work and findings on established scientific research, protocols, and evidence-based practices. In addition to being a Public Safety Psychologist, Dr. Dunnigan is also a retired Police Sergeant. He worked in the Bay Area and served as a Crisis

and Hostage Negotiations Team Leader, Criminal and Homicide Investigator, and Mental Health Officer.

Dr. Dunnigan is listed on the California Peace Officer Standards and Training (P.O.S.T.) Psychological Evaluator List and is and remains current on all continuing education requirements. He meets the criteria specified in section 1031(f) of the California Government Code and conducts psychological evaluations for police, fire departments, military and government personnel, and private clients throughout California

Probation's current psychological provider has been delayed in conducting these screening due to the number of referrals made by other agencies delaying the timeline for new hires to start employment. This vendor will assist the department to receive timely psychological evaluation results.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	It will be expensed to Probation (1420000). Although this service is not budgeted, the Department has cost savings from anticipated unused Professional Services contracts.
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	The Agreement has an automatic annual renewal for two additional years with a contract maximum of $18,000 annually. This will be budgeted in Probation (1420000) accordingly in future fiscal years.
Consequences if not approved:	Probation does not have a back-up Psychologist to perform preemployment psychological assessments in the event the current provider is not able to provide service in a timely manner, delaying the hiring of a candidate.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY AGREEMENT NO. 240248B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this 1st day of January 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and RYAN GAVIN DUNNIGAN "doing business as DUNNIGAN PSYCHOLOGICAL & THREAT ASSESSMENTS, LLC a California corporation, whose mailing address is 104 Oakmont Avenue, San Rafael, CA 94901,hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide Pre-employment Psychological Evaluations, Fitness-for-Duty Evaluations, and Post-Incident Stress Debriefings; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein; and

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2025 unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention. The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed two (2) additional years, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A", attached hereto, incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein.

(b) Expenses. Travel and other expenses will be reimbursed by COUNTY upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the provisions set forth in Exhibit "B."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of EIGHTEEN THOUSAND DOLLARS ($18,000) for professional services and expenses per fiscal year; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. [RESERVED]

(d) CONTRACTOR shall submit invoices not more often than monthly to the PROBATION ADMINISTRATIVE MANAGER who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C".

(e) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the CHIEF PROBATION OFFICER upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties

imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance**:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001

06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the NAPA COUNTY PROBATION DEPARTMENT prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this

Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless COUNTY and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least 30 days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for

damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY	CONTRACTOR
Napa County Probation Department	Dunnigan Psychological &Threat Assessments, LLC
Probation Administrative Manager	Ryan Dunnigan
212 Walnut Street	104 Oakmont Avenue
Napa, CA 94559	San Rafael, CA 94901

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment" revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its CHIEF PROBATION OFFICER. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use or disclose County Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with County. Any other access, use or disclosure of County Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential files, documents or devices containing County Protected Information from a County facility; the unauthorized transmission of County Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or County employees) who do not have a County approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms if this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of. This includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or

its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

16. **No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the CHIEF PROBATION OFFICER.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any

extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages. [RESERVED]

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any

public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

By executing this Agreement, the COUNTY hereby determines in writing that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

28. **Special Terms and Conditions.** [RESERVED]

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

DUNNIGAN PSYCHOLOGICAL & THREAT ASSESSMENTS, LLC

By_____
Ryan Gavin Dunnigan, Individual/Sole Proprietor

"CONTRACTOR"

NAPA COUNTY, a political subdivision of the State of California

By_____
JOELLE GALLAGHER, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel By: Deputy County Counsel Date: January 3, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:

EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

Pre Employment Psychological Evaluations

- Perform the Minnesota Multiphasic Personality Inventory 2-Restructed Form (MMPI-2-RF) or the MMPI-3 version;.
- 16 Personality Factors Test (16-PF);
- Clinical Interview;
- Review Candidates History;
- Psycho-Social History Questionnaire;
- Psychological Suitability Declaration; and,
- Findings Report to the COUNTY.

Fitness-for-Duty Evaluation (For a Specific and Identified Employee)

- Perform the Minnesota Multiphasic Personality Inventory 2-Restructed Form (MMPI-2-RF) or the MMPI-3, or the MMPI-2 (if preferred by the COUNTY – typically used for non-sworn personnel);
- A review of the provided candidate's history and records;
- Psycho-Social History Questionnaire;
- A Clinical Interview by CONTRACTOR;
- Utilization of specific and Indicated Psychological Testing Instruments* (to address identified or possible areas of focus and/or concern);
- Findings Report for the revie and consideration of COUNTY; and.
- A follow-up consultation after the one-time evaluation appointment with the COUNTY (if desired by the COUNTY).

* *Pricing does not include additional psychometric test costs*

** *Pricing does not include: subsequent consultations/meetings; any time or efforts related to any and all legal proceedings or preparations; or to any and all court-related activities. These costs would be billed at CONTRACTOR's designated hourly rates.*

Pre-employment evaluations are currently conducted virtually. Post-Incident Debriefing sessions and Fitness-for-Duty evaluations can be conducted in-person or virtually (depending on the preference of the COUNTY and the situational factor)

Incident Post Incident Debriefing Sessions or Return-to-Work Sessions

- CONTRACTOR to meet with COUNTY staff following any critical incident or concerning event COUNTY feels could necessitate the need for a follow-up counseling session.

- CONTRACTOR to meet with COUNTY staff slated to return to work following a leave, critical incident, or a concerning event where COUNTY feels staff could benefit from a counseling session prior to returning to work.
- CONTRACTOR to meet with COUNTY staff and provide counseling and possible recommendations to support the resiliency and wellbeing of COUNTY staff (for post-incident sessions or return-to-work sessions.
- Concerns, feedback from the session(s) and/or recommendations could be provided to the COUNTY if policies and practices permit.
- CONTRACTOR does not provide or perform group debriefings.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT "B"

COMPENSATION AND EXPENSE REIMBURSEMENT

Activity	Fee
Pre-Employment Psychological Evaluation	$600.00 Each Candidate Evaluation
Fitness-for-Duty Evaluation (FFDE)	$1,250 Each One-Time FFDE
Individual Post-Incident Debriefing Sessions or Return-To-Work Session	$250.00 per hour, billed in 30-minute increments

EXHIBIT "C"

[Company Name]
[Street Address]
[City, ST ZIP Code]
Phone [phone] Fax [fax]
Taxpayer ID #

SAMPLE INVOICE

INVOICE #_____
DATE:_____

TO:

[Customer Name]
[Street Address]
[City, ST ZIP Code]

FOR:

[Project or service description]
Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15		Smith,			
1/1/15	Site visit/investigation 123 Main St,	Engineer	1.5	$165.00	247.50
1/1/15	Napa.	Smith,	1	$165.00	165.00
	Conf w/Owner	Engineer	4	$165,00	660.00
	AutoCad, Bldg X, 3rd Floor	Smith, Engineer			
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	$195.00	341.25
1/2/15		Smith,			
1/2/15	AutoCad Bldg X, 3rd Floor	Engineer	4	$165.00	660.00
	Conf w/Owner re 2nd Floor	Smith, Engineer	.5	$165.00	82.50
1/3/15	Mtg w/Jones re 2nd Floor; conf	Smith,			
1/3/15	w/Owner	Engineer	1.5	$165.00	247.50
	Mtg w/Smith; conf w/Owner re 2nd Floor	Jones, PE	1.5	$195.00	292.50
				TOTAL	

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-76

TO: Board of Supervisors

FROM: Steven Lederer, Director of Public Works

REPORT BY: Leigh Sharp, Deputy Director of Public Works

SUBJECT: Acceptance of $510,000 donation to the Animal Shelter from the Ursula Haase Trust of 2008

RECOMMENDATION

Accept a bequest in the amount of $510,000 from the Ursula Haase Trust of 2008 to the Napa County Animal Shelter and authorize the Chair to sign a letter of appreciation and a trust distribution receipt. (Fiscal Impact: $510,000 Revenue; Animal Shelter Fund 5040, Division 50400 (Operations) and Division 50405 (Capital Projects); Not Budgeted; Discretionary)

BACKGROUND

In accordance with Board Resolution No. 05-40 and the Donation Policy for Acceptance and Disbursement of Gifts, Bequests, or Devices in excess of $1,000, this agenda item has been prepared to accept a bequest in the amount of $510,000 from the Ursula Haase Trust of 2008 (Trust) and to send a letter of appreciation to the Trustee and sign a trust distribution receipt.

The $510,000 bequest distribution is dated December 20, 2023 and is a partial distribution of the Trust. A second and final distribution is anticipated in the next six months and staff will return to the Board to accept those funds when they are received, as warranted. The bequest did not come with restrictions other than it benefit the Napa County Animal Shelter. Bequest funds will be used to provide spay/neuter vouchers to the community, to support future capital improvement projects at the Animal Shelter, and may be used for other operational needs as identified.

Requested actions:

1. Accept a bequest in the amount of $510,000 from the Ursula Haase Trust of 2008; and

2. Chair to sign a letter of appreciation and a trust distribution receipt.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No

Where is it budgeted?	$100,000 will be deposited to Animal Shelter Operations - Spay/Neuter Fund (Fund 5040, Subdivision 5040001) and the remainder will be deposited to Animal Shelter Capital Improvement Projects (Fund 5040, Subdivision 5040500).
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Acceptance of bequest will benefit the Animal Shelter and the community it serves.
Is the general fund affected?	No
Future fiscal impact:	The $510,000 is a partial distribution of the Trust. Staff will return to the Board to accept a final distribution as warranted.
Consequences if not approved:	If the bequest is not accepted, the Animal Shelter will not benefit from the funds as intended by the Trust.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Codes of Regulations 15378 (State CEQA guidelines) and therefore CEQA is not applicable.

A Tradition of Stewardship
A Commitment to Service

Board of Supervisors

1195 Third St.
Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4421
Fax: (707) 253-4176

Joelle Gallagher
Chair

January 23, 2024

Carol Young, Trustee
Ursula Haase Trust
Via email: [redacted]

Dear Ms. Young:

Thank you for your assistance with meeting our obligations to accept the bequest from the Ursula Haase Trust. As requested in your December 20, 2023, enclosed is a signed copy of the Distribution Receipt.

The bequest will support Napa County Animal Shelter operations and capital improvement needs, including support of the spay/neuter voucher program to assist community members with the spay and neutering of pets and feral cats.

It is our goal to serve the community by providing a safe and healthy environment for animals in transition, while promoting animal welfare education and responsible pet ownership. The generous bequest from Ms. Haase will further our mission and we are very grateful.

On behalf of the Board of Supervisors and the Napa County Animal Shelter and Adoption Center, thank you.

Sincerely,

Joelle Gallagher
Chair

Joelle Gallagher District 1 | **Ryan Gregory** District 2 | **Anne Cottrell** District 3 | **Alfredo Pedroza** District 4 | **Belia Ramos** District 5

PRIORITY MAIL

December 20, 2023

Leigh K Sharp (she/her/hers)
Napa County
Deputy Director of Public Works – General Services
1195 Third Street, Ste 101
Napa, CA 94559

RE: HAASE, URSULA TRUST OF 2008

Dear Ms Sharp:

Thank you for submitting a copy of the EIN# and W-9 form for Napa County c/o Napa County Animal Shelter.

As of this date, the value of the Haase Trust is approximately $660,000. At this time, we are making a total partial distribution of $600,000 between the four (4) charitable beneficiaries and retaining a cash reserve for final debts/administration expenses.

In January, 2024, we will prepare an Accounting for your review and proceed with preparation of Ursula's final 2023 personal tax return, as well as a fiduciary tax return for Ursula's Trust.

Kindly sign a copy of this letter as your receipt for the enclosed check in the amount of $510,000.00 which is 85% of the corpus and return in the enclosed envelope provided.

Should you have questions, feel free to contact me and I will be happy to assist you.

HAPPY HOLIDAYS!

Sincerely,

Carol Young, Trustee
Ursula Haase Trust
Email: [redacted]
Phone: [redacted]

Encl.
Cc: Jennifer Morse, Atty

URSULA HAASE TRUST OF 2008
DISTRIBUTION RECEIPT

_____ _____

Received by: Date

_____

Title/Name of Charity

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-86

ne

TO: Board of Supervisors

FROM: Steven Lederer - Director of Public Works

REPORT BY: James Reese, P.E. - Associate Engineer

SUBJECT: Award of Construction Contract for the Chiles-Pope Valley Road Bridge Replacement Project, RDS 15-23

RECOMMENDATION

Award a construction contract to Gordon N. Ball, Inc. for the replacement of the Chiles Pope Bridge, appropriate funding from the Accumulated Capital Outlay Fund, and relieve the apparent low bidder Anvil Builders of its erroneous bid. (Fiscal Impact: $9,181,038; Roads Fund; Not Budgeted; Discretionary)

[4/5 vote required]

BACKGROUND

The Chiles Pope Valley Bridge Replacement Project, RDS 15-23 project was advertised on October 16, 2023. The Clerk of the Board opened seven (7) bids on November 16, 2023. The bid results are listed below:

Anvil Builders	Emeryville, CA	$5,887,494.00
Gordon N. Ball	Alamo, CA	$6,246,113.00
Valentine Corporation	San Rafael, CA	$6,557,369.00
Ghilotti Construction Co	Santa Rosa, CA	$6,829,248.84
Golden State Bridge Inc.	Benicia, CA	$7,046,751.00
Granite Construction Company	Ukiah, CA	$7,199,510.94
Myers & Sons Construction LLC	Sacramento, CA	$9,677,294.50

Anvil Builders was the original apparent lowest bidder; however, Anvil Builders submitted to the County a claim of a clerical ‘bid mistake’ [PCC 5103(b)] describing its failure to correctly input subcontractor pricing for

five (5) different bid items and requested bid relief. Anvil Builders notified the County of this mistake within five (5) days of bid opening. Anvil Builders may not be relieved of its bid without consent of the Napa County Board of Supervisors as the awarding authority for this contract [PCC 5101(a)]. Staff recommends granting the requested relief consistent with the Board's authority under Public Contract Code Section 5101(b) as all of the required factors to grant relief exist in this instance [PCC 5103].

After granting this relief, staff recommends awarding the contract to the lowest responsive bidder, Gordon N. Ball of Alamo, CA. Gordon N. Ball's bid of $6,246,113 is higher than the engineer's construction cost estimate of $5,200,000, which was based on previous projects. The construction costs increase is due to substantial construction inflation in the last couple years, and new requirements imposed by California Department of Fish and Wildlife (CDFW).

In Fiscal Year 2016-17, the Board budgeted $892,024 from the Roads Fund to cashflow the consultant and County staff expenses during design/engineering. On March 22, 2022, the Board approved a budget transfer of $400,160 to allow the County to use the Accumulated Capital Outlay Fund (ACO) to cash flow the design and engineering. This $9,181,038 budget transfer will finance construction. As always, we will work to maximize our reimbursement from Caltrans. The project is expected to receive an 88.53% federal reimbursement ($8,127,973) and requires a 11.47% local share ($1,053,065). All reimbursements will be returned to the source of the original funds (Roads or ACO) for use on future projects. The project budget includes an estimated $1,374,145 for construction management. This estimate may need some revision when staff returns to the Board for approval of the construction management contract. Currently staff is interviewing consultants and some additional budget may be requested after negations with the construction management firm are completed.

Gordon N. Ball, is not a local vendor; however, the Public Contract Code requires that the construction contract be awarded to the lowest responsible and responsive bidder, regardless of whether the low bidder is local or not. Staff reached out to the local construction contractor community by advertising the request for bids in the Napa Valley Register and the Solano-Napa Builder's Exchange, and by posting on the County website. Staff also sent "Notices to Contractors" to the local construction community.

The Napa County Public Works Department is responsible for maintaining 78 bridges that are included in the National Bridge Inventory. The Federal Highway Administration (FHWA) provides Highway Bridge Program (HBP) funding to replace bridges when needed and the State of California Department of Transportation (Caltrans) administers the HBP in California.

On August 20, 2012, Caltrans issued a letter requesting that local agencies review their public highway bridges for potential replacement, rehabilitation, or preventive maintenance and to take necessary actions to address any public safety issues and to extend the life of our bridge inventory. County staff evaluated fourteen (14) bridges and prioritized eight (8) bridges for the first phase of the HBP. Caltrans and the FHWA programmed HBP funding to replace seven bridges, including the Chiles Pope Valley Road Bridge over Chiles Creek (21C-0075).

The County built the Chiles Pope Valley Road Bridge in 1907 and widened it in 1950. The Bridge is approximately 2.1 miles north of Highway 128 and Caltrans identified it as Structurally Deficient and Scour Critical with a Sufficiency Rating (SR) rating of 53.9 (on a scale of 100). Caltrans designated Chiles Pope Road Bridge Replacement as eligible for 88.53% HBP funding. The purpose of this replacement project is to provide a safe, functional, and reliable crossing over Chiles Creek on Chiles - Pope Valley Road.

County staff has acquired the necessary regulatory permits and incorporated the pertinent environmental measures and permit conditions into the plans and specifications. Mitigation planting will come later as a separate project. Caltrans authorized the County to proceed with constructing a two-span concrete bridge and the County advertised bid documents to contractors. To accelerate the construction in 2024, the plan is to close Chiles - Pope Valley Road at the bridge for eight months (eight month closure to the public excluding emergency vehicles, and four months to everyone including emergency vehicles), let the contractor work two shifts per day to rebuild the bridge, and detour traffic to Lower Chiles Valley Road and Highway 128 during the construction. People will be able to access Moore Creek Park and other properties west of the bridge from Highway 128. There are two homes between the bridge and Lower Chiles Valley Road. The detour will add approximately 10 minutes to the drive. The accelerated construction should allow emergency services vehicles to begin using the new bridge in October 2024. A community meeting to discuss the project with interested individuals is scheduled for January 24th.

Requested Actions:

1. Relieve the apparent low bidder Anvil Builders of its erroneous bid in the amount of $5,887,494 in accordance with the County's authority under Public Contract Code Section 5101(b).
2. Award the Contract to Gordon N. Ball, Inc. of Alamo, California for their low base bid of $6,246,113 for the Chiles Pope Valley Bridge Replacement Project, RDS 15-23, and authorize the Chair to sign the construction contract; and
3. Approval of a Budget Amendment for the following (4/5 vote required):
    a. Increase appropriations by $9,181,038 in Accumulated Capital Outlay Fund (ACO) (Fund 3000, Sub-Division 3000000, Account 56100) offset by use of its available fund balance to fund Project 14010 (Fund 2040, Sub-Division 2040500, Project 14010, Account 48200); and
    b. Increase appropriations by $9,181,038 in Project 14010 (Fund 2040, Sub-Division 2040500, Project 14010, Account 52360) offset by a transfer-in revenue from ACO.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Construction funding is necessary for the bridge replacement.
Is the general fund affected?	No

Future fiscal impact:	If this project is not allowed to move forward, Napa County may be required to return all funds that have previously been reimbursed by Caltrans. If the project moves forward, the project will proceed at an 88.53% federal reimbursement and 11.47% local share. The construction management and inspection expenses at this point are an estimation and may be revised when a final contract with the construction management firm is finalized. A sperate budget will also need to be created for mitigation plantings. Once constructed the new bridge like the existing bridge will need to be maintained.
Consequences if not approved:	The project will not proceed to the construction phase and further damage at the foundations of the bridge will likely occur in later years, thus putting the safety of travelers on the bridge at risk.
Additional Information	In Fiscal Year 2016-17, the Board budgeted $892,024 from the Roads Fund to cashflow the consultant and County staff expenses during design/engineering. On March 22, 2022, the Board approved a budget transfer of $400,160 to allow the County to use the Accumulated Capital Outlay Fund (ACO) to cash flow the design and engineering. As always, we will work to maximize our reimbursement from Caltrans. All reimbursements will be returned to the source of the original funds (Roads or ACO) for use on future projects.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: On December 7, 2021, the Board adopted a Mitigated Negative Declaration. According to the Mitigated Negative Declaration, the proposed project would have, if mitigation measures are not included, potentially significant environmental impacts in the following areas: biological resources, hydrology and water quality, transportation, and tribal cultural resources. This project site is not on any of the lists of hazardous waste sites enumerated under Government code section 65962.5

November 22nd, 2023

Napa County Public Works
1195 Third Street
Room 101 Napa CA 94559
Attention: Steven E. Lederer, Director of Public Works

RE: **Chiles-Pope Valley Road Bridger Over Chiles Creek RDS 15-23, Federal Project Number: BRLS 5921 (074)**

Subject: BID RELIEF REQUEST

Pursuant to the 'INSTRUCTION TO BIDDERS "ITB", and applicable sections of California Contract Code Sections 5100-51074, please allow this letter to serve as 'written notice' of a clerical 'bid mistake' [PCC 5103(B)] by Anvil Builders Inc (ABI), the apparent low bid 'Contractor', and a request for bid relief. In accordance with The Contract Documents, specifically the Proposal Form Bid Items 29, 30, 31, 32, 33 which include the scope of work for a specialty subcontractor to perform the drilled bridge foundation elements, when finalizing its bid, ABI made a clerical error by unintentionally failing to input / update the 'Heavy BID' cost estimating software with the correct subcontractor price [PCC 5103(D)].The mistake resulted in a bid that materially differed from the intended value [PCC 5103(C)]. This notice is being provided within 5 business days of the bid opening [PCC 5103(B)]. In summary ABI is requesting bid relief.

Sincerely,

beau blume

Digitally signed by beau blume
DN: C=US, E=bblume@anvilbuilders.com, O=Anvil Builders, CN=beau blume
Date: 2023.11.22 13:42:07-08'00'

Beau Blume | ABI Project Executive

Enclosures:

Cc:
Alan Guy | ABI CEO

CHILES VALLEY ROAD BRIDGE REPLACEMENT PROJECT, RDS 15-23						
January 8, 2024						
Program 14010-50139						
Budget Item	**Budget Item Amount**	**Board Appropriation Request Today**	**Board Appropriation to date**	**Appropriation Amount Spent to Date**	**Budget Amount % Spent to Date**	**Appropriation Amount Balance**
Construction	$6,246,113	$6,246,113	$0	$0	0%	$0
Construction Contingency (15%)	$936,917	$936,917	$0	$0	0%	$0
Design and Engineering: Consultant	$1,306,250	$300,000	$1,006,250	$1,006,250	100%	$0
Design and Engineering Contingency (5%)	$65,313	$65,313	$0	$0	0%	$0
Lands and Temporary Construction Easement	$32,884	$0	$32,883	$32,883	100%	$0
Construction Management and Construction Administration (assumed 22% of construction)	$1,374,145	$1,374,145	$0	$0	0%	$0
County Project Management/Administration (PE+ROW+CE)	$333,135	$150,000	$183,135	$183,135	100%	$0
Special Inspections and Fees	$5,000	$5,000	$0	$0	0%	$0
CM/CA/INSP Contingency (5%)	$69,247	$69,247	$0	$0	0%	$0
Permits/ Post Construction Maintenance/ Reporting	$45,000	$34,304	$10,696	$10,696	100%	$0
TOTAL	**$10,414,003**	**$9,181,038**	**$1,232,964**	**$1,232,964**		**$0**
Prepared by James Reese, P.E.						

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-100

TO: Board of Supervisors

FROM: Steven Lederer, Director of Public Works

REPORT BY: Katherine Bales, Assistant Airport Manager

SUBJECT: Approval of Amendment 1 to Agreement No. 230243B with Mead & Hunt, Inc.

RECOMMENDATION

Approve and authorize Amendment No.1 to Agreement No. 230243B with Mead & Hunt, Inc. for professional engineering services in support of the Airport's approved Terminal Area Redevelopment Phase 1 Project by increasing contract on-call services by $50,000 for a new maximum compensation of $163,435. (Fiscal impact: $50,000; Airport Fund 5010, Division 50105, Project 23041; Budgeted; Discretionary)

BACKGROUND

In April 2021, airport staff completed a Request for Qualifications (RFQ) process to identify firms to provide services related to Federal Aviation Administration (FAA) and locally funded projects. Mead & Hunt, Inc., (Mead & Hunt) was selected as the airport's engineering and architectural consultant through that RFQ process.

To facilitate Fixed Base Operator (FBO) development at the Airport, the Napa County Airport Terminal Redevelopment Phase One Project, including relocation of an existing sewer main, an electrical vault, a backup generator, and the rotating beacon, must be implemented. On December 13, 2022, the Board of Supervisors approved Agreement No 230243B with Mead & Hunt, Inc. to assist with design and administration of the sewer main realignment, to provide peer review of private development design concepts and plans submitted by the FBO's, and to provide on-call services related to other design and peer review needs.

Napa Airport awarded Construction contracts for the Napa County Airport Terminal Redevelopment Phase One Project (Project) on December 17, 2023. During the Project pre-construction meeting and subsequent progress meetings, it was determined that changes to Project design would be necessary to combat long-lead times on several electrical system components and to address project timing. The schedule is crucial as the County is contractually obligated to have specific infrastructure relocated by Summer 2024.

Amendment No. 1 to Agreement 230243B with Mead and Hunt will increase on-call funds by $50,000 and will allow Mead & Hunt to assist in the review of Project design changes and contractor submittals. If not approved,

the County will no longer be able to use Mead & Hunt services for the necessary review of contractor submittals and other requested on-call task orders. If approved the new maximum compensation amount will be $163,435.

The new maximum agreement amount is for professional design and review services and will be paid out of the Airport Enterprise Fund 5010 Division 50105 Project 23041.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Airport CIP 5010500 Project No. 23041
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	This amendment will facilitate the steps necessary to implement the Airport's Terminal Area Redevelopment Phase 1 Project which requires movement of critical infrastructure at the Airport.
Is the general fund affected?	No
Future fiscal impact:	This project will likely extend into Fiscal Year 2024-25 and will be budgeted accordingly.
Consequences if not approved:	Significant delays in construction schedule to County, resulting in further delays to FBO Development.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Mitigated Negative Declaration Adopted September 22, 2020. According to the Mitigated Negative Declaration, the proposed project would not have any potentially significant environmental impacts with implementation of mitigation measures. Mitigation measures are proposed for the following areas: air quality and tribal cultural resources. This project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5.

AMENDMENT NO. 1
NAPA COUNTY AGREEMENT NO. 230243B

PROFESSIONAL SERVICES AGREEMENT

THIS AMENDMENT NO. 1 OF AGREEMENT 230243B is made and entered into as of this 1st day of January, 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Mead & Hunt, Inc. a Wisconsin corporation, whose business address is 1360 19th Hole Dr. Suite 200, Windsor, CA 95492, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide Design Engineering Services for the Sewer Realignment Project at the Napa County Airport; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein; and

WHEREAS, CONTRACTOR has extensive experience, knowledge, and immediate availability for the required scope of work; and

NOW, THEREFORE, COUNTY and CONTRACTOR hereby agree to amend Agreement 230243B in the manner set forth below.

1. Paragraph 3 of the Agreement shall be amended to read as follows:

3. **Compensation.**

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of Eighty-Three Thousand Four Hundred Thirty- Four Dollars and Fifty Cents ($83,434.50) for professional services for the entirety of the contract and a total of Eighty Thousand Dollars ($80,000) for any separately requested task orders for a total not to exceed contract amount of One Hundred Sixty-Three Thousand Four Hundred Thirty-Four Dollars and Fifty Cents ($163,434.50); provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

2. This Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Amendment may be executed by facsimile or electronic (.pdf) signature and a facsimile or electronic (.pdf) signature shall constitute an original for all purposes.

3. All other terms and conditions of this Agreement, except as amended herein, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Amendment No. 1 of Napa County Agreement No. 230243B as of the date first above written.

MEAD & HUNT, INC.

By_____
SCOTT VAN GOMPEL, Vice President

By_____
JEFF LEONARD, Vice President

"CONTRACTOR"

NAPA COUNTY, a political subdivision of the State of California,

By_____
JOELLE GALLAGHER, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors
By: *Sheryl L. Bratton* County Counsel	Date: _____ Processed By:	By:_____
Date: January 9, 2024	_____ Deputy Clerk of the Board	

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-42

TO: Board of Supervisors

FROM: Oscar Ortiz, Sheriff-Coroner

REPORT BY: Rollie Soria, Sheriff's Administrative Manager

SUBJECT: Capital Asset Purchase: Bernhardt Juncture Conference Table

RECOMMENDATION

Authorize the purchase of a capital asset for a replacement conference table with appropriation authority for the Sheriff's Office. (Fiscal Impact: $10,126, General Fund 1000, Division 13600, Budgeted; Discretionary)

[4/5 vote required]

BACKGROUND

Sheriff's Office administration conference room table is 17 years-old and has reached the end of its useful life. The table supports have been repaired several times and cannot support the weight of the table, making it unstable and unsafe to move. With the increase in administrative personnel at the Sheriff's Office, the table is undersized and cannot accommodate more than six individuals. In addition, it lacks the functionality of modern conference tables that have integrated media wire management and device ports. The cost of the conference table is in the Sheriff's budget. However, due to cost increases, the conference table is now a capital asset that requires a Budget Amendment to transfer appropriations to Equipment (Account 55400).

Requested Actions:

1. Authorize the purchase of a Bernhardt Juncture Conference Table to replace the current conference table that has reached the end of its useful life and establish it as a capital asset.
2. Approval of a budget amendment, increasing appropriations in the amount of $10,126 within the Sheriff's Budget 1360000 Equipment (55400), offset by a commensurate decrease in appropriations in the same budget from Office Furniture/Fixtures (53105).

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Sheriff's Operations Budget (Fund 1000, Org 1360000)
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The administration conference room table has reached the end of its useful life. The table supports have been repaired several times and no longer properly support the weight of the table. It is unstable, cannot be moved, and presents a potential safety hazard; therefore, it should be replaced.
Is the general fund affected?	Yes
Future fiscal impact:	Any future fiscal impact will be budgeted accordingly.
Consequences if not approved:	If not approved, Sheriff's Office will be unable to purchase the Bernhardt Juncture Conference Table according to the County's Purchasing Policy. The continued use of the aging conference table will only increase the likelihood of its eventual support failure.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

Napa County

Board Agenda Letter

1195 THIRD STREET
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Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-77

TO: Board of Supervisors

FROM: Sheriff Oscar Ortiz, Director of Emergency Services

REPORT BY: Brieanna Jones- Emergency Services Officer

SUBJECT: Resolution Approving Fiscal Year 2022-23 Emergency Management Performance Grant (EMPG)

RECOMMENDATION

Adopt a Resolution and approve appropriation authority to participate in the federally funded Fiscal Year 2023 Emergency Management Performance Grant for a maximum amount of $151,952, and appropriate authority for related expenditures and identified revenue for the period of July 1, 2023, through June 30, 2025, to support emergency preparedness efforts. (Fiscal Impact: $151,952, General Fund 1000, Office of Emergency Services Division 13800, Not Budgeted, Discretionary)

[4/5 vote required]

BACKGROUND

The FY2023 Emergency Management Performance Grant (FY23 EMPG) program plays an important role to implement the National Preparedness System. It supports efforts to assist state, local, tribal, and territorial governments in preparing for all hazards, as authorized by Section 662 of the Post Katrina Emergency Management Reform Act (6 U.S.C. § 762) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121 et seq.). Title VI of the Stafford Act authorizes Federal Emergency Management Agency (FEMA) to issue grants for the purpose of providing a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the federal government and the states and their political subdivisions.

The State of California's Governor's Office of Emergency Services (Cal OES), annually allocates and administers federal funds through the State's EMPG Program for the purpose of improving emergency management capabilities at the state, local and tribal levels. Cal OES has allocated to the Napa County Office of Emergency Services $151, 952 in EMPG funds, for the period of July 1, 2023, through June 30, 2025, to strengthen the County's ability to plan for, prevent, protect from, mitigate against, respond to, and recover from emergencies, disasters, crimes and terrorist events. On October 1, 2023, the County Office of Emergency Services notified the State of Cal OES of its intention to participate in the FY2023 EMPG and accept the award

amount of $151,952.

The FY2023 EMPG program funds will be used to support the Office of Emergency Services emergency management capabilities and the projects chosen for funding this year were developed by the Napa County Office of Emergency Services and are based on its assessment and prioritization of the operational need for planning and training. The Office of Emergency Services FY2023 EMPG expenditure plan is listed here:

- Project A - Prime Mover Vehicle ($50,000)
- Project B - Portable Generator for Emergency Shelter Support- ($60,000)
- Project C- Interoperability Radio Project- ($41,952)

Participation in the EMPG program requires a dollar-for-dollar match (cash or third-party in-kind contributions), and it is a reimbursement grant, which requires the County to purchase services and equipment prior to receiving reimbursement from the EMPG grant funds. Napa County's award and therefore match requirement is $151, 952. The Office of Emergency Services intends to fulfill the match obligation by using the following Fiscal Year 2024 general fund funded emergency preparedness related expenditures:

• Emergency Preparedness Volunteer Coordinator Contract Fee ($50,000 per fiscal year)

• Public Awareness/Emergency Notification Local Vendor Contract Fee ($49,949 per fiscal year)

• Office of Emergency Services Satellite Telephones Services Fee ($12,000 per fiscal year)

• Fire Mitigation Efforts Contract ($41,952)

Napa County Office of Emergency Services manages and coordinates the program projects. The Undersheriff may initiate reallocation of certain expenses to meet the needs of specific projects. The County of Napa Office of Emergency Services will, as required by 2 CFR 200.313(d), physically inventory equipment purchased with FY2023 EMPG funds every two years and maintain appropriate inventory records.

REQUESTED ACTIONS:

1. Adopt a resolution approving participation in the federally funded Fiscal Year 2023 Emergency Management Performance Grant for the period of July 1, 2023, through June 30, 2025, for a maximum amount of $151, 952.

2. Approve a budget amendment increasing appropriations for the Emergency Services Grants subdivision (1380005) budget by $151, 952 with offsetting revenues from Fiscal Year 2023 EMPG funding.

3. Approve the purchase of capital assets to include a prime mover vehicle ($50,000), a portable generator ($60,000) and handheld radios ($41,952).

4. Delegate signing authority to the Assistant County Executive Officer and the Undersheriff to accept and administer the program funds, including executing the agreement and any subsequent amendments, or modifications which are within budget appropriations.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No

Where is it budgeted?	To be budgeted in OES Grants Budget - 1380005
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	FY2023 EMPG grant funds will reimburse the grant budget upon completion of the grant's performance period.
Is the general fund affected?	Yes
Future fiscal impact:	Funding will be budgeted next year in the OES Grants Budget 1380005 (FY24-25).
Consequences if not approved:	If not approved, OES will not participate in FY23 EMPG.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

RESOLUTION NO.

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS AUTHORIZING PARTICIPATION IN THE 2023 EMERGENCY MANAGEMENT PERFORMANCE GRANT PROGRAM AND ACCEPTANCE OF ALLOCATED FUNDS

WHEREAS, on July 1, 2023, the State of California's Governor's Office of Emergency Services (Cal OES) notified Napa County of the opportunity to participate in the Fiscal Year 2023 Emergency Management Performance Grant Program (EMPG); and

WHEREAS, these federal funds have been secured by the State and each California County allocation was included in the State's EMPG supplemental guidance announcement; and

WHEREAS, Cal OES requires a Board certified resolution be submitted to finalize the acceptance process; and

WHEREAS, Cal OES allocates the federal Department of Homeland Security funds administered through the State's EMPG program for the purpose of supporting comprehensive all-hazards emergency preparedness for the protection of life and property; and

WHEREAS, the County Executive Office submitted an application on behalf of the Napa County Office of Emergency Services, to Cal OES by the December 29, 2023, deadline.

NOW, THEREFORE, BE IT RESOLVED, by the Napa County Board of Supervisors as follows:

1. The Board approves the County's participation in the federally funded Fiscal Year 2023 Emergency Management Performance Grant Program for the period of July 1, 2023, through June 30, 2026.

2. The County accepts the State's revenue allocation of federal Department of Homeland Security funds in the amount of $151,952 to Napa County and related appropriations to enhance catastrophic incident planning, response, and recovery in the Napa County Operational Area.

3. The Assistant County Executive Officer and the Undersheriff are each separately authorized to execute documents for and on behalf of Napa County, a political subdivision of the State of California, and take any other actions necessary for the purpose of obtaining federal financial assistance provided by the Federal Department of Homeland Security and sub-granted through the State of California.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 23rd day of January 2024 by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____

Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: *Shana A. Bagley* Date: December 27, 2023	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-90

TO: Board of Supervisors

FROM: Sheriff Oscar Ortiz- Director of Emergency Services

REPORT BY: Brieanna Jones- Emergency Services Officer

SUBJECT: Resolution Approving Participation in Homeland Security Grant Program- HSGP

RECOMMENDATION

Adopt a Resolution and approve appropriation authority to participate in the federally funded Homeland Security Grant Program (HSGP) for three grant years- federal FY23, FY24 and FY25, with an allocation of $204,898 for FY23 for the period September 1, 2023, through May 31, 2026. (Fiscal Impact, $204,898, Office of Emergency Services Division 13800 and Fire Protection Operations Division 21000, Not Budgeted, Discretionary)

[4/5 vote required]

BACKGROUND

The Homeland Security Grant Program (HSGP) plays an important role in the implementation of the National Preparedness System by supporting the building, sustainment, and delivery of core capabilities essential to achieving the National Preparedness Goal of a secure and resilient Nation. The building, sustainment, and delivery of these core capabilities are not exclusive to any single level of government, organization, or community, but rather, require the combined effort of the whole community. The HSGP supports core capabilities across the five mission areas of Prevention, Protection, Mitigation, Response, and Recovery. California's HSGP administers funds for the purpose of improving:

1. Information Analysis and Sharing
2. Protection of Soft Targets
3. Critical Infrastructure Protection
4. Enhance Cyber Security
5. Community Resilience
6. Election Security
7. Violent Extremism Prevention

On December 1, 2023, the County Office of Emergency Services notified the State of California's Office of

Emergency Services (Cal OES) of its intention to participate in the FY2023 Homeland Security Grant Program (HSGP) and accept the award allocation amount of $204,898. HSGP allows for the governing board to approve participation in up to three fiscal year grant awards at one time. Considerations regarding capital asset purchases and budget adjustments will still require additional board approval, but the resolution to participate will only need to be repeated after every three cycles, if approved.

FY2023 Homeland Security Grant program funds will reimburse the grant budget a maximum of $204,898 upon completion of the grant's performance period. The HSGP funds cover expenditures for equipment, emergency management operational coordination, public health information sharing, communications, interoperability planning, and grant management and administration costs.

As required in the Cal OES FY2023 HSGP grant guidance, the proposed expenditure plan was developed in consultation with the Napa County Sheriff, the County Public Health Officer, the County Fire Chief, the City of Napa Fire Chief and the City of Napa Police Chief. As part of the HSGP application process, applicants must submit projects that align with the National Priority areas and formulas defined by the Department of Homeland Security (DHS) in the grant Notice of Funding Opportunity (NOFO).

Summary of the plan for FY2023 HSGP is listed here:

- Subawards
    - $27,398 - City of Napa Fire Department for purchase of tablets and software
    - $6,600 - City of Napa for Domestic Terror Training
- County purchased assets and supplies
    - $6,400 - Interagency Intelligence Sharing Board (to be monitored by the City of Napa Police Department)
    - $78,000 - Law Enforcement Ballistic Shield Deployment Project to provide ballistic shields to all County law agencies
    - $71,000 - Interagency Hazmat Team Sensor (Napa County Fire subdivision 21010-00 will own asset)
    - $6,500 - Napa County Volunteer Fire Agencies Personal Protective Equipment (Personal Floatation Devices for volunteer fire departments)
    - $9,000 - Napa County Elections Surveillance Cameras Project (individual cameras below the capitalization threshold)

The grant terms require the County to purchase the equipment prior to receiving reimbursement from the HSGP grant funds. The County of Napa Office of Emergency Services manages and coordinates the program projects. The Undersheriff may initiate a reallocation of certain expenses to meet the needs of specific projects. The County of Napa Office of Emergency Services will, as required by 2 CFR 200.313(d), physically inventory equipment purchased with FY2023 HSGP funds every two years and maintain appropriate inventory records. Staff requests approval of and authorization for the Undersheriff to execute reimbursement claims and any subsequent documentation that may be required following approval of the FY23 HSGP grant application,

including executing the agreement and any subsequent amendments, modifications which are within budgeted appropriations.

Requested Actions:

1. Adopt a resolution approving participation in the federally funded Homeland Security Grant Program for three grant fiscal cycles (FY23, FY24, FY25).

2. Approve a budget amendment increasing appropriations for the Emergency Services Grants subdivision (1380005) budget by $204,898 with offsetting revenues from Fiscal Year 2023 HSGP funding.

3. Approve the purchase of capital assets for 11 ballistic shields ($78,000), a Hazmat Equipment Sensor ($71,000), Elections' camera surveillance system ($9,000), and an Intelligence Sharing Board ($6,400).

4. Approve a budget amendment increasing appropriations by $71,000 offset by a transfer-in to Fire Protection Operations (2100000) with a corresponding transfer out from Emergency Services Grants (1380005).

5. Delegate signing authority to the Assistant County Executive Officer and the Undersheriff to accept and administer the program funds, including executing the agreement and any subsequent amendments, or modifications which are within budget appropriations.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	To be budgeted in OES Grants Budget- (1380005) and Fire Protection Operations (2100000)
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	FY2023 HSGP grant funds will reimburse the grant budget upon completion of the grant's performance period.
Is the general fund affected?	Yes
Future fiscal impact:	Funding will be budgeted each year for two years in the OES Grants Budget 1380005 (FY24-25 and FY25-26).
Consequences if not approved:	If not approved, OES will not participate in FY23HSGP

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

RESOLUTION NO.

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS AUTHORIZING PARTICIPATION IN THE HOMELAND SECURITY GRANT PROGRAM AND ACCEPTANCE OF ALLOCATED FUNDS FOR GRANT CYCLES 2023, 2024, and 2025.

WHEREAS, on January 1, 2023, the State of California Governor's Office of Emergency Services (Cal OES) notified counties of the opportunity to participate in the FY2023 Homeland Security Grant Program (HSGP); and

WHEREAS, these federal funds have been secured by the State and each California County allocation was included in the State's HSGP supplemental guidance announcement; and

WHEREAS, Cal OES requires a Board-certified resolution be submitted for up to three grant cycles to finalize the acceptance process; and

WHEREAS, Cal OES allocates the federal Department of Homeland Security funds administered through the State's HSGP for the purpose of improving prevention and protection capabilities at the state, tribal, and local levels to address critical infrastructure protection and strengthen medical surge and mass prophylaxis; and

WHEREAS, the County Executive Office submitted its application on behalf of the Napa County Office of Emergency Services, to Cal OES by the December 29, 2023, deadline; and

WHEREAS, the proposed expenditure plan was developed in consultation with the Terrorism Working Group composed of the Napa County Sheriff, the County Public Health Officer, the County Fire Chief, the City Fire Chief, and the City of Napa Police Chief.

NOW, THEREFORE, BE IT RESOLVED, by the Napa County Board of Supervisors as follows:

1. The Board approves the County's participation in the federally funded Homeland Security Grant Program for the following three grant cycles: FY2023, FY2024, and FY2025; and

2. The County accepts the State's revenue allocation of federal Department of Homeland Security funds in the amount determined by the risk assessment for its nexus to terrorism in Napa County and related appropriations to enhance catastrophic incident planning, response, and recovery in the Napa County Operational Area; and

3. The Assistant County Executive Officer and the Undersheriff are hereby authorized to execute documents for and on behalf of Napa County, a political subdivision of the State of California, and to take any other actions necessary for the purpose of

obtaining federal financial assistance provided by the Federal Department of Homeland Security and sub-granted through the State of California.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 23rd day of January 2024, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

By: _____

Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: *Shana A. Bagley* Date: December 27, 2023	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-106

TO: Board of Supervisors

FROM: Sheriff Oscar Ortiz- Director of Emergency Services

REPORT BY: Brieanna Jones- Emergency Services Officer

SUBJECT: Dynamic Planning LLC Agreement for Multi-Jurisdictional Hazard Mitigation Plan (MJHMP) Update

RECOMMENDATION

Approve and authorize Agreement No. 240266B with Dynamic Planning for a maximum amount of $186,955 for the term January 23, 2024, through June 30, 2025, with an automatic renewal provisional for two additional years for a Multi-Jurisdictional Hazard Mitigation Plan. (Fiscal Impact, $186,955, General Fund 1000, Budgeted, Discretionary)

BACKGROUND

Napa County Office of Emergency Services issued a Request for Proposal (RFP) to engage a consultant for a Multi-Jurisdictional Hazard Mitigation Plan (MJHMP) Update. This is after the Napa County OES was notified of its award through the federally funded Hazard Mitigation Grant Program (HMGP). The Board of Supervisors previously approved and accepted the grant funds on September 26, 2023. Local or Multi-Jurisdictional Hazard Mitigation Plans are to be updated and sent to Cal OES and FEMA for approval every five years to be able to apply for and accept federal funding. The Napa County Multi-Jurisdictional Hazard Mitigation Plan was last updated and approved by FEMA in August 2020. This plan update is to coincide with the five-year process and will be developed, reviewed, and completed by August of 2025. Napa County OES has engaged each jurisdiction and various special districts that were included in the last update. Napa County is adding new jurisdictions to its hazard mitigation plan to collaborate and create cohesiveness in our county-wide planning efforts. The following jurisdictions have provided letters of interest to be included, City of American Canyon, American Canyon Fire Protection District, Napa County Flood Control, City of Napa, Howell Mountain Mutual Water Company, Napa County Office of Education, Napa Valley College, Town of Yountville, City of St. Helena, and City of Calistoga.

Today's requested action is for the approval of an agreement with Dynamic Planning LLC for a maximum amount of $186,955 for the term of January 23, 2024, through June 30, 2025, with an automatic renewal provision of two additional year for a Multi-Jurisdictional Hazard Mitigation Plan Update.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Emergency Services Grants- 1380005
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Costs for these services will be reimbursed to the county by Hazard Mitigation Grant Program (HMGP).
Is the general fund affected?	Yes
Future fiscal impact:	Future fiscal impact will be budgeted accordingly.
Consequences if not approved:	If not approved, Napa County will not develop a Multi-Jurisdictional Hazard Mitigation Plan Update which is required to be updated every five years per FEMA.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY AGREEMENT NO. 240266B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of January 2024, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Dynamic Planning, LLC, doing business as Dynamic Planning + Science, whose mailing address is 19235 HWY 550 Montrose, CO 81401, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to update Napa County's Multi-Jurisdictional Hazard Mitigation Plan; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein.

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the following terms and conditions:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire June 30, 2025, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination), or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes), and 21 (Access to Records/Retention The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the terms and conditions then in effect, not to exceed two (2) additional years, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A," attached hereto in addition to the Request for Proposal and CONTRACTOR's proposal, incorporated by reference herein.

3. **Compensation.**

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rate of set forth in Exhibit "B," attached hereto and incorporated by reference herein.

(b) Expenses. Travel and other expenses will be reimbursed by COUNTY upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the provisions set forth in Exhibit "B."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of ONE HUNDRED EIGHTY-SIX THOUSAND AND NINE HUNDRED FIFTY-FIVE DOLLARS AND FIFTY CENTS ($186,955.50) for professional services and travel expenses incurred; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. **Method of Payment.**

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than monthly to the Emergency Services Officer who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C."

(e) Legal Status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Emergency Services Officer upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents, and employees of

CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance**:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person, and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS ($1,000,000) per claim. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS ($1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the Napa County Office of Emergency Services prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents, and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents, and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. **Hold Harmless/Defense/Indemnification.**

(a) In General. To the full extent permitted by law, CONTRACTOR shall defend at its own expense, indemnify, and hold harmless COUNTY and its officers, agents, employees, volunteers, or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages, or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising from all acts or omissions of CONTRACTOR or its officers, agents, employees, volunteers, contractors, and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages, or expenses arising from the sole negligence or willful acts of COUNTY or its officers, agents, employees, volunteers, representatives, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records, or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents, or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents, and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within five (5) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other

remedies it may have, terminate this Agreement by giving ten (10) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. **Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. **Disposition of, Title to, and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights, and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense,

from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval, or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY	CONTRACTOR
Napa County	Ethan Mobley, Managing Member
Office of Emergency Services	Dynamic Planning, LLC.
1535 Airport Blvd	19235 HWY 550
Napa, CA 94558	Montrose, CO 81401

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents, and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) Napa County "Policy for Maintaining a Harassment and Discrimination Free Work Environment" as stated in Napa County Policy Manual Part I, Section 37K.

(c) Napa County Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991, and subsequently revised effective May 1, 2009.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, as stated in the Napa County Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its Emergency Services Officer**.** Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state, and local laws, rules, and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state, and local laws, rules, and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use, or disclose County Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with COUNTY. Any other access, use, or disclosure of County Protected Information is prohibited. Examples of prohibited accesses, uses, and disclosures include, but are not limited to: the removal of confidential files, documents, or devices containing County Protected Information from a County facility; the unauthorized transmission of County Protected Information via email, fax, or other means; and the discussion of such information with other individuals (including other CONTRACTOR or County employees) who do not have a COUNTY approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms if this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological, and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records, and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information of which it becomes aware. This includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the COUNTY of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules, or regulations applicable at the time of the breach.

(c) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense NISPOM standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

16. **No Assignments or Subcontracts.**

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Emergency Services Officer.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of

CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State, and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV, and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV, and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (California Code of Regulations, title 2, section 11000, et seq.), the provisions of the Government Code, title 2,-sections 11135-11139.5, and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment

and Housing Commission implementing Government Code section 12990, subds. (a) through (f), and set forth in California Code of Regulations, title 2, 11099, et seq., are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR

hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of COUNTY relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office," "annual", and "leaving office" Statements of Economic Interest as a "consultant," as defined in California Code of Regulations, California Code of Regulations, title 2, section 18700.3, unless it has been determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

28. **Special Terms and Conditions.** All or part of this Agreement will be funded through federal the Hazard Mitigation Grant Program (HMGP) provided to the COUNTY through California Office of Emergency Services. Because COUNTY is required to comply with certain conditions and assurances in order to receive and expend the grant funds, COUNTY is also

required to ensure that COUNTY's contractors also comply with those conditions and assurances. Accordingly, CONTRACTOR shall adhere to the special terms, conditions, and assurances of the HMGP, which are on file with the COUNTY's Emergency Services Division, and set forth in Exhibits "D" through "E," attached hereto and incorporated by reference herein.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

By_____
ETHAN MOBLEY, Managing Member

"CONTRACTOR"

NAPA COUNTY, a political subdivision of the State of California

By_____
JOELLE GALLAGHER, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM Office of County Counsel By: *Shana A. Bagley* Deputy County Counsel Date: January 9, 2024	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____

EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

Scope of services to be performed: To include but not limited to.

1. Organizing Resources: The primary objective for this phase is to identify all resources within Napa County government that can be utilized throughout the facilitated planning effort to identify the COUNTY's probable hazards and mitigation actions to address those hazards. Most important is developing the personnel resources within the County Departments and other organizations from the Operational Area to serve on the Multi-Jurisdictional Hazard Mitigation Grant Program (MJHMGP) Planning Committee. The CONTRACTOR shall assist in this phase. The CONTRACTOR will also work with the Lead Project Planner to develop and implement a public involvement strategy that will meet the statutory requirements of Section 201.6, 44 Code of Federal Regulations (CFR), and also meet the requirements of the Federal Emergency Management Agency (FEMA) and Community Rating System (CRS) programs.

2. Hazard Identification and Profiling: The CONTRACTOR will compile and review available existing plans, studies, and data available from local, state, and federal sources and work with the MJHMP Planning Committee to identify all probable hazards that affect the COUNTY. COUNTY staff and planning team members will work with the CONTRACTOR to compile the available information sorted by type of hazard to develop the hazard profiles, which will include a description, location, extent, previous occurrences, and future occurrences. As much as possible, the CONTRACTOR will include graphics and generate Geographic Information System (GIS) based maps that will illustrate the extent and location of each hazard, as well as other available information, within the defined planning area.

3. Vulnerability Analysis: The objective of this task is to develop an overall summary of the COUNTY's vulnerability to and potential impacts of each hazard. To do this, an accurate inventory of the types and numbers of buildings, infrastructure, and critical facilities will be compiled. A starting point for this information will be the Safety Elements of the General Plans of the COUNTY, which are required to have such information. Local staff will be interviewed by the CONTRACTOR on the accuracy and need to update the information, and necessary updating will be conducted by the CONTRACTOR with local staff assistance. FEMA's Hazus (computer program from FEMA that estimates potential losses during a disaster) will be used to generate level 2 vulnerability assessments for the earthquake and flood hazards. While wildfire is a well-known risk to Napa County, Hazus is limited generating vulnerability assessments, however, the CONTRACTOR should explore Napa County's vulnerability to wildfire by use of other existing Napa County plan such as Community Wildfire Protection Plan (CWPP). A goal of this task will be to develop a parcel-level inventory of vulnerable structures. Once the hazard identification and profiling and vulnerability analyses have been completed, the CONTRACTOR will organize a public workshop to present the findings. The objective of this task is to inform the general

public of the planning process, the identified hazards, and obtain public input/comment and additional data/information for the MJHMP Update.

4. Develop Mitigation Actions: The objective of this task is to develop a mitigation plan that includes mitigation actions to address each of the identified hazards to ensure loss reduction. The CONTRACTOR will work closely with the MJHMP Planning Committee to identify goals and objectives, as well as mitigation actions. Past and current goals/objectives/mitigation actions will be reviewed, and new goals/objectives/mitigation actions will be identified. The CONTRACTOR will work with the MJHMP Planning Committee to compile information and data to develop the Capabilities Assessment. Once all mitigation actions are identified, the CONTRACTOR and MJHMP Planning Committee will work together to determine how each mitigation action will be implemented and administered. The responsible department/agency, potential funding sources, and implementation timeline will be outlined for each mitigation action. To ensure compliance with NFIP and CRS, flood mitigation actions will be identified to enhance the COUNTY's CRS class.

5. Prepare Draft Plan: The principal objective of this entire project is to submit an updated plan to California Office of Emergency Services (Cal OES) and FEMA Region IX that will meet FEMA's criteria for updates to local hazard mitigation plans and thus provide a new Disaster Mitigation Act (DMA) eligibility window. The MJHMP Update will also include elements of a floodplain management plan that meets CRS for Napa County. Under this phase, the CONTRACTOR and the planning team will assemble the updated plan utilizing all updated or enhanced data generated in the performance descriptions in Sections B-1 through B-4. The CONTRACTOR will ensure that each required component is included in the plan. The plan will include plan maintenance procedures for scheduled monitoring, evaluating, and updating the plan. The plan will also identify the process for incorporating the plan's requirements into other planning mechanisms. Throughout the planning process, the CONTRACTOR will work closely with COUNTY staff as the plan is prepared with deliverables associated with each milestone. An Administrative Draft will be prepared by the CONTRACTOR for HMSC team review. Based on comments received from the COUNTY staff on the Administrative Draft, the CONTRACTOR will prepare the Public Review Draft for the public review period.

6. Plan Review and Revision for Plan Adoption: The Public Review Draft will be made available publicly (via online and copy at the local COUNTY libraries) by the CONTRACTOR for review to interested parties and general. A public workshop will be held with the assistance of the CONTRACTOR to describe and obtain public comment/input on the plan. The CONTRACTOR along with the COUNTY will review all comments received during the public review period and make appropriate amendments to the plan. The CONTRACTOR will provide all required content for development of the Final Draft Plan to be submitted to the Napa County Board of Supervisors (Board) for Plan Adoption. The formal COUNTY adoption of the Final Draft MJHMP will be an agenda item at a public Board Meeting.

7. FEMA Submittal and Approval: The CONTRACTOR along with the COUNTY will review all comments received from the Board and the public at the Board Meeting and make appropriate amendments to the Plan. The CONTRACTOR will provide all required content for development of the Final MJHMP for submittal to Cal OES and FEMA for review. The CONTRACTOR will

also compile and include supporting documentation (e.g., official resolution) as part of the Final MJHMP and will then complete the FEMA Crosswalk Reference Document and submit to both Cal OES and FEMA for approval and CRS review. The CONTRACTOR will prepare Napa County's worksheets for credit under CRS Activity 510 − Floodplain Management Planning and assist in making sure that all of the COUNTY's creditable CRS points are properly calculated and documented. If the updated MJHMP does not receive FEMA approval after Cal OES and FEMA review has been completed, the CONTRACTOR will review FEMA "required revision" comments provided in the Crosswalk Reference Document and perform all "required" follow-on tasks to finalize the updated MJHMP for FEMA approval and CRS review. The COUNTY will take the lead on incorporating "recommended revision" comments, which are NOT required for approval, into the Updated MJHMP. In the event that FEMA approval process extends beyond the contract period of performance, the COUNTY will modify the performance period as a no cost adjustment to the COUNTY.

8. Deliverables: The CONTRACTOR shall provide the COUNTY the following deliverables:
• Up to 30 copies of meeting materials (i.e., agenda, handouts, previous meeting notes) for all meetings
• Electronic copies of the interim draft deliverables throughout the planning process
• Up to 15 copies of the Final plan (hard bound with tabs)
• Electronic Files of Final Plan: one (1) Word format and one (1) PDF format

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT "B"

COMPENSATION AND EXPENSE REIMBURSEMENT

A. BURDENED LABOR COSTS

A.1. Personnel Cost Schedule

(Fully Burden Hourly Rates; Hourly Rate includes profit and overhead)

Labor Category	Name	Hr. Rate	Hours	Cost
Project Manager	Ethan Mobley, AICP	$ 155.00	160	$ 24,800.00
Sr.GIS Analyst	Brian Greer	$ 145.00	240	$ 34,800.00
Lead Planner	Daven Solis	$ 130.00	280	$ 36,400.00
Planning Staff	Cory Schreiner	$ 110.00	240	$ 26,400.00
Planning Staff	Raini Ott, CFM, AICP	$ 95.00	260	$ 24,700.00
GIS Analyst	Alex Krebs	$ 95.00	260	$ 24,700.00
Planning Intern	Cassidy Baumann	$ 40.00	240	$ 9,600.00
Total Hours and Cost			**1,680**	**$ 181,400.00**

A.2. Project Milestone Schedule

Milestone	Hours	Cost	%
Project Management	84	$ 9,070.00	5.0%
Task 1: Organize Resources	168	$ 18,140.00	10.0%
Task 2. Hazard Identification and Profiling	168	$ 18,140.00	10.0%
Task 3. Vulnerability Analysis	252	$ 27,210.00	15.0%
Task 4. Develop Mitigation Actions	252	$ 27,210.00	15.0%
Task 5. Prepare Draft Plan	420	$ 45,350.00	25.0%
Task 6. Plan Review and Revision for Adoption	168	$ 18,140.00	10.0%
Task 7. FEMA Submittal and Approval	168	$ 18,140.00	10.0%
Total Hours and Cost	**1,680**	**$ 181,400.00**	**100%**

LABOR TOTAL $ 181,400.00

B. DIRECT COSTS

B.1. Travel, Meetings, Advertisement

Item	Unit Type	# of Units	Cost/Unit	Total Cost
Mileage	Miles	250	$ 0.55	$ 137.50
Overnight Stay*	Each	4	$ 125.00	$ 500.00
Flights	Each	4	$ 400.00	$ 1,600.00
Meeting Supplies	Each	3	$ 400.00	$ 1,200.00
Total Travel, Meetings and Advertisement Costs				**$ 3,437.50**

**Overnight Stay for; Planning Committee Meetings (2 person, 4 Nights)*

B.2. Print Production and Shipping

Item	Unit Type	# of Units	Cost/Unit	Total Cost
Binding and Binders with Tabs	Each	15	$ 25.00	$ 375.000
FedEx Mail	Each	2	$ 50.00	$ 100.000
Color Prints 11x17	Each	250	$ 0.33	$ 83.000
Color Prints 8.5x11	Each	6,000	$ 0.23	$ 1,380.00
Large Scale Color Prints	Sq. Ft.	120	$ 1.50	$ 180.000
Total Reproduction Costs				**$ 2,118.000**

DIRECT COST TOTAL $ 5,555.50

Total Project Cost

A. Total Burdened Labor Costs	$ 181,400.00
B. Total Direct Costs	$ 5,555.50
Total Project Cost	**$ 186,955.50**

EXHIBIT "C"

[Company Name]
[Street Address]
[City, ST ZIP Code]
Phone [phone] Fax [fax]
Taxpayer ID #

SAMPLE INVOICE

INVOICE #_____
DATE:_____

TO:

[Customer Name]
[Street Address]
[City, ST ZIP Code]

FOR:

[Project or service description]
Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15		Smith,			
1/1/15	Site visit/investigation 123 Main St,	Engineer	1.5	$165.00	247.50
1/1/15	Napa.	Smith,	1	$165.00	165.00
	Conf w/Owner	Engineer	4	$165,00	660.00
	AutoCad, Bldg X, 3rd Floor	Smith,			
		Engineer			
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	$195.00	341.25
1/2/15		Smith,			
1/2/15	AutoCad Bldg X, 3rd Floor	Engineer	4	$165.00	660.00
	Conf w/Owner re 2nd Floor	Smith,	.5	$165.00	82.50
		Engineer			
1/3/15	Mtg w/Jones re 2nd Floor; conf	Smith,			
1/3/15	w/Owner	Engineer	1.5	$165.00	247.50
	Mtg w/Smith; conf w/Owner re 2nd	Jones, PE	1.5	$195.00	292.50
	Floor				
				TOTAL	

EXHIBIT "D"

SPECIAL PROVISIONS

FEDERAL PROVISIONS

I. DEFINITIONS

A. Government means the United States of America and any executive department or agency thereof.

B. FEMA means the Federal Emergency Management Agency.

C. Third Party Subcontract means a subcontract at any tier entered into by CONTRACTOR or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

II. FEDERAL CHANGES

A. CONTRACTOR shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 CFR 200.317 through 200.326 and more fully set forth in Appendix II to Part 200—Contract Provisions for non–Federal Entity Contracts Under Federal Awards, which is included herein by reference. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

B. The CONTRACTOR agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

III. ACCESS TO RECORDS

A. The CONTRACTOR agrees to provide the COUNTY, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

B. The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The CONTRACTOR agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date COUNTY makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, CONTRACTOR agrees to maintain same until the COUNTY, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

D. The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

IV. DEBARMENT AND SUSPENSION

A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

B. CONTRACTOR represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. CONTRACTOR agrees that neither CONTRACTOR nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code § 4477.

C. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. CONTRACTOR agrees to the provisions of Attachment 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Attachment 1, CONTRACTOR is the "prospective lower tier participant."

D. The CONTRACTOR agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.

E. This certification is a material representation of fact relied upon by COUNTY. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the COUNTY, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

F. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. The COUNTY and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to the COUNTY, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The CONTRACTOR agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further

agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE (applicable to all construction contracts awarded meeting the definition of "federally assisted construction contract" under 41 CFR 61-1.3)

CONTRACTOR agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60.14 is hereby incorporated by reference.

A. CONTRACTOR and subcontractors 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, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

B. CONTRACTOR and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

C. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, title 2, section 7285 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 a part hereof as if set forth in full.

D. CONTRACTOR and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

VII. ANTI-KICKBACK ACT COMPLIANCE (applicable to all contracts and subgrants for construction or repair; 44 CFR §13.36(i)(4))

CONTRACTOR agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

VIII. DAVIS-BACON ACT COMPLIANCE (applicable to construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation;)

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of COUNTY's expenses incurred in connection with the services provided under this Agreement, CONTRACTOR agrees to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below. These requirements are in addition to the requirements set forth in Section 19(b) of the Agreement.

A. The CONTRACTOR shall be bound to the provisions of the Davis-Bacon Act and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of

the minimum wage rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at http://www.dir.ca.gov/lcp.asp.

B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at www.wdol.gov. Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop down menu for State, select, "California." In the drop down menu for COUNTY, select "Sonoma." In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

IX. CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to all contracts in excess of $100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

A. Compliance: CONTRACTOR agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

B. Overtime: No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

C. Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the provisions of Paragraph B, the CONTRACTOR and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such CONTRACTOR and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.

D. Withholding for unpaid wages and liquidated damages: The COUNTY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.

E. Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime

contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

X. NOTICE OF REPORTING REQUIREMENTS

A. CONTRACTOR acknowledges that it has read and understands the reporting requirements of FEMA in Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide and agrees to comply with any such applicable requirements.

B. The CONTRACTOR agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XI. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

A. CONTRACTOR agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

1) The copyright in any work developed with the assistance of funds provided under this Agreement;
2) Any rights of copyright to which CONTRACTOR purchases ownership with the assistance of funds provided under this Agreement.

B. The CONTRACTOR agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XII. PATENT RIGHTS (applicable to contracts for experimental, research, or development projects financed by FEMA; 44 CFR §13.36(i)(8))

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the COUNTY and CONTRACTOR agree to take actions necessary to provide immediate notice and a detailed report to FEMA.

B. Unless the Government later makes a contrary determination in writing, irrespective of CONTRACTOR's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the COUNTY and CONTRACTOR agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.

C. The CONTRACTOR agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

XIII. ENERGY CONSERVATION REQUIREMENTS

A. The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).

B. The CONTRACTOR agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XIV. CLEAN AIR AND WATER REQUIREMENTS (applicable to all contracts and subcontracts in excess $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any year)

A. CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

B. CONTRACTOR agrees to report each violation of these requirements to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.

C. The CONTRACTOR agrees to include paragraph A and B above in each third party subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FEMA.

XV. TERMINATION FOR CONVENIENCE OF COUNTY (applicable to all contracts in excess of $10,000)

See Paragraphs 10 and 11 of the Agreement.

XVI. TERMINATION FOR DEFAULT (applicable to all contracts in excess of $10,000)

CONTRACTOR's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraphs 9 and 11 of the Agreement.

XVII. CHANGES.

See Paragraph 17 of the Agreement.

XVIII. LOBBYING (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).)

A. CONTRACTOR shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. CONTRACTOR agrees to the provisions of Attachment 2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of $100,000).

C. CONTRACTOR agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XIX. MBE / WBE REQUIREMENTS

The COUNTY intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONTRACTOR shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit the forms listed below with the bid shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract.

PRIME CONTRACTOR RESPONSIBILITIES

All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

"GOOD FAITH" EFFORT PROCESS

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a CONTRACTOR fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

A. Place qualified small and minority businesses and women's business enterprises on solicitation lists;

B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and

E. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

F. If subcontracts are to be let, CONTRACTOR shall take the affirmative steps listed in 2 CFR 200.321.

XX. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.323)

A. In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
   1) Competitively within a timeframe providing for compliance with the contract performance schedule;
   2) Meeting contract performance requirements; or
   3) At a reasonable price.

B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program .

C. The CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

XXI. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

The preceding provisions include, in part, certain standard terms and conditions required by FEMA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FEMA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FEMA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any COUNTY requests that would cause COUNTY to be in violation of the FEMA terms and conditions.

XXII. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

XXIII. DHS SEAL, LOGO, AND FLAGS.

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.

XXIV. DOMESTIC PREFERENCES FOR PROCUREMENTS (2 CFR 200.322)

As appropriate and to the extent consistent with law, contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

"Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

"Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

XXV. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (2 CFR 200.216)

(a) CONTRACTOR is prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(b) As described in Public Law 115-232, section 889, covered telecommunications equipment or services is any of the following:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(3) Telecommunications or video surveillance services provided by such entities or using such equipment.

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

ATTACHMENT 1

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, COUNTY may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. CONTRACTOR is required to sign the certification below which specifies that neither CONTRACTOR nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that CONTRACTOR will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

Instruction for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

	1/11/2024
CONTRACTOR Signature	Date

ATTACHMENT 2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The CONTRACTOR, Dynamic Planning, LLC. certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



CONTRACTOR Signature

1/11/2024

Date

EXHIBIT E

HMGP STANDARD ASSURANCES

(Please see Cal OES Standard Assurances for HMGP)

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 23-1847

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Daniel Sanchez, Senior Management Analyst

SUBJECT: Economic Outlook presentation

RECOMMENDATION

Receive a presentation from Dr. Robert Eyler, economist at Sonoma State University who will provide the Board with an update on the economic outlook for Napa County (No Fiscal Impact, Discretionary).

BACKGROUND

Dr. Robert Eyler will present an economic update on the regional economy and the outlook for Napa County. The presentation will cover tax revenues, demographics, and the regional economy. This presentation will inform the annual 5-Year Forecast which will be presented to the Board in February.

FISCAL IMPACT

Is there a Fiscal Impact?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	This item is discretionary; however, this presentation provides background information to the Board as staff prepared the upcoming budget.

ENVIRONMENTAL IMPACT

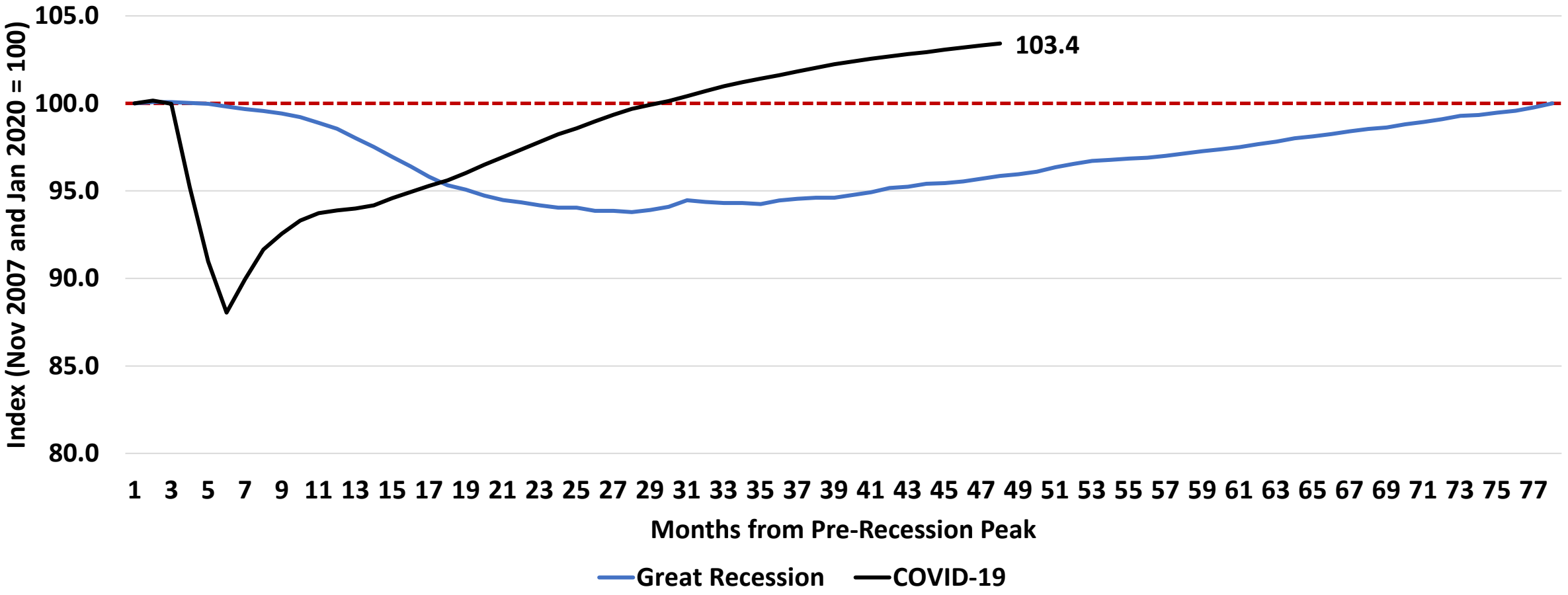
ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

NAPA COUNTY: ECONOMIC OUTLOOK

NAPA, CA JANUARY 2024

Robert Eyler, PhD
President, Economic Forensics and Analytics Inc.
Professor, Economics, Sonoma State University
eyler@econforensics.com

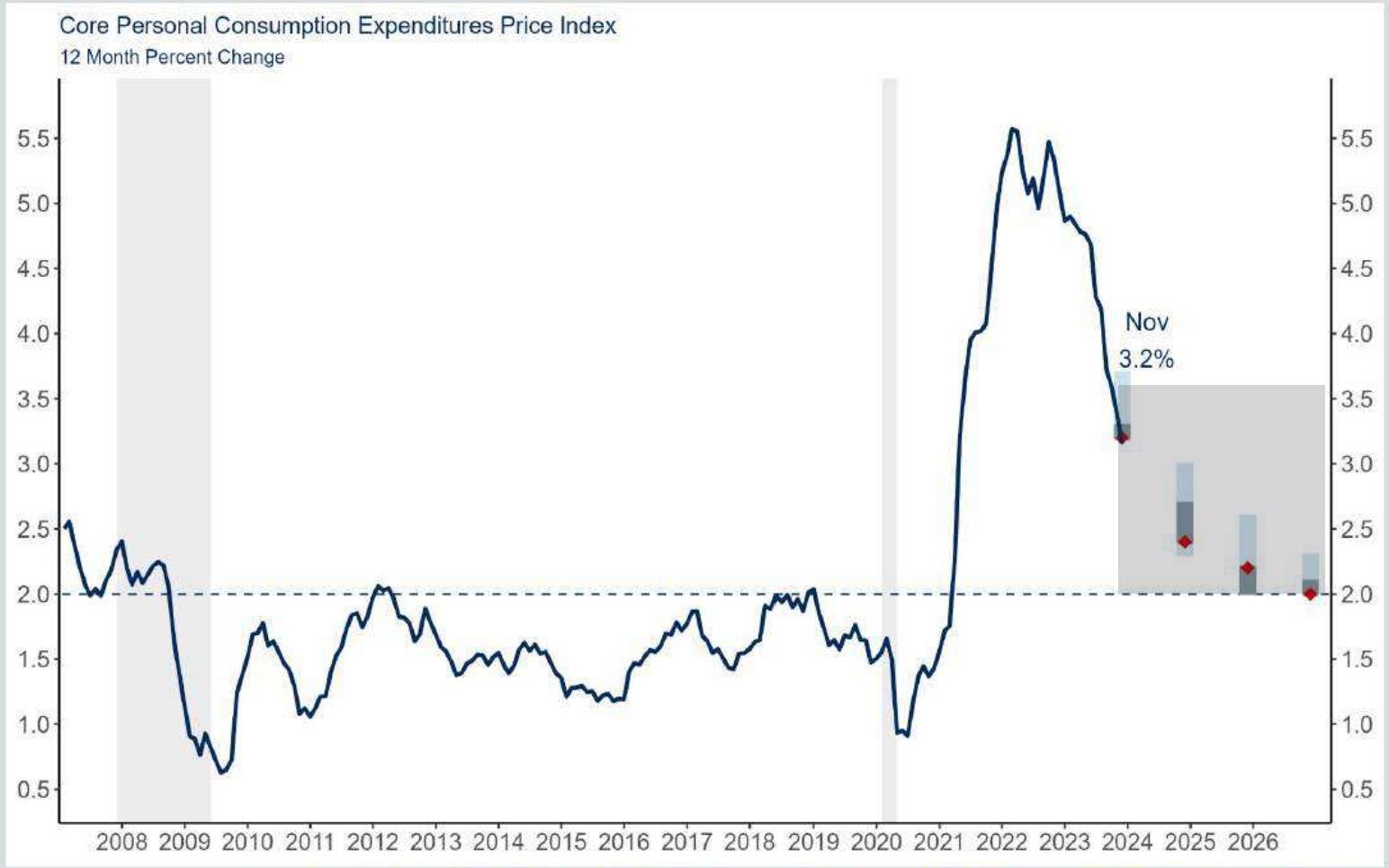
Employment Recovery Comparison, United States, Great Recession and COVID-19 Recession, Months from Peak Employment, Index Nov 2007 and Jan 2020 = 100, to December 2023



Source: BLS and EFA

Core PCE Prices, 2007 to 2026: Is the FED's job done?

Core Personal Consumption Expenditure Price Index



FEDERAL RESERVE BANK OF RICHMOND
Richmond • Baltimore • Charlotte

Notes: FOMC projection is the median, range, and central tendency for Q4/Q4 percent changes, from the March 2023 meeting. Red dots indicate median projections. Core PCE Price Index excludes expenditures on gasoline and food services.

Source: Bureau of Economic Analysis & Board of Governors via Haver Analytics 4

What to Watch

- Slow fall through forecasted inflation to 2026
- Signal for rates to fall in 2024: to what level?

Federal Reserve Philadelphia Forecast, Survey of Professional Forecasters

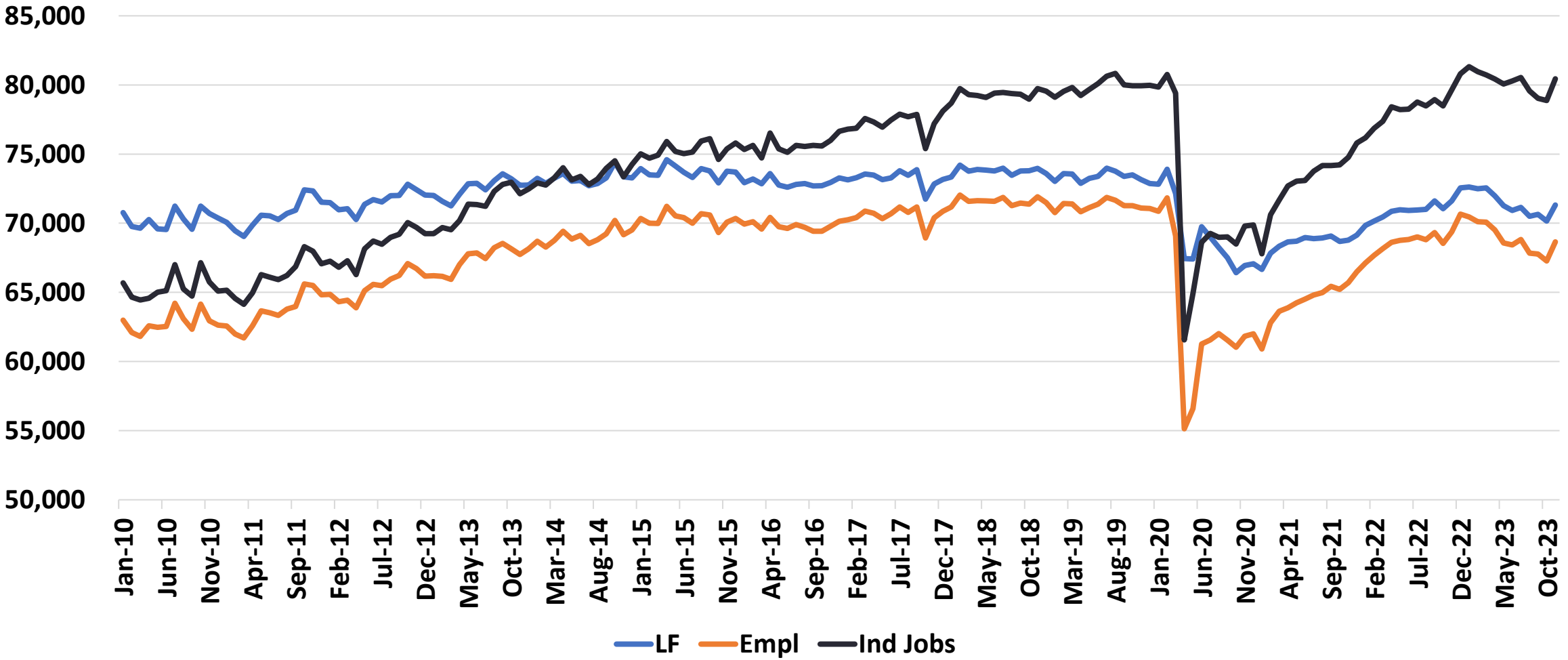
These data are from November 2023

Bottom Line: Economy more resilient than previous forecasts, inflation beginning its descent; relatively high interest rates will continue pressure economy to 2025

	Real GDP (%)		Unemployment Rate (%)		Core PCE Inflation (%)	
Annual data (projections based on annual-average levels):						
	Previous	New	Previous	New	Previous	New
2023	2.1	2.4	3.6	3.7	3.7	3.5
2024	1.3	1.7	4.0	4.1	2.4	2.4
2025	2.1	1.8	4.2	4.2	2.1	2.1
2026	1.7	2.1	4.1	4.0	N/A	N/A

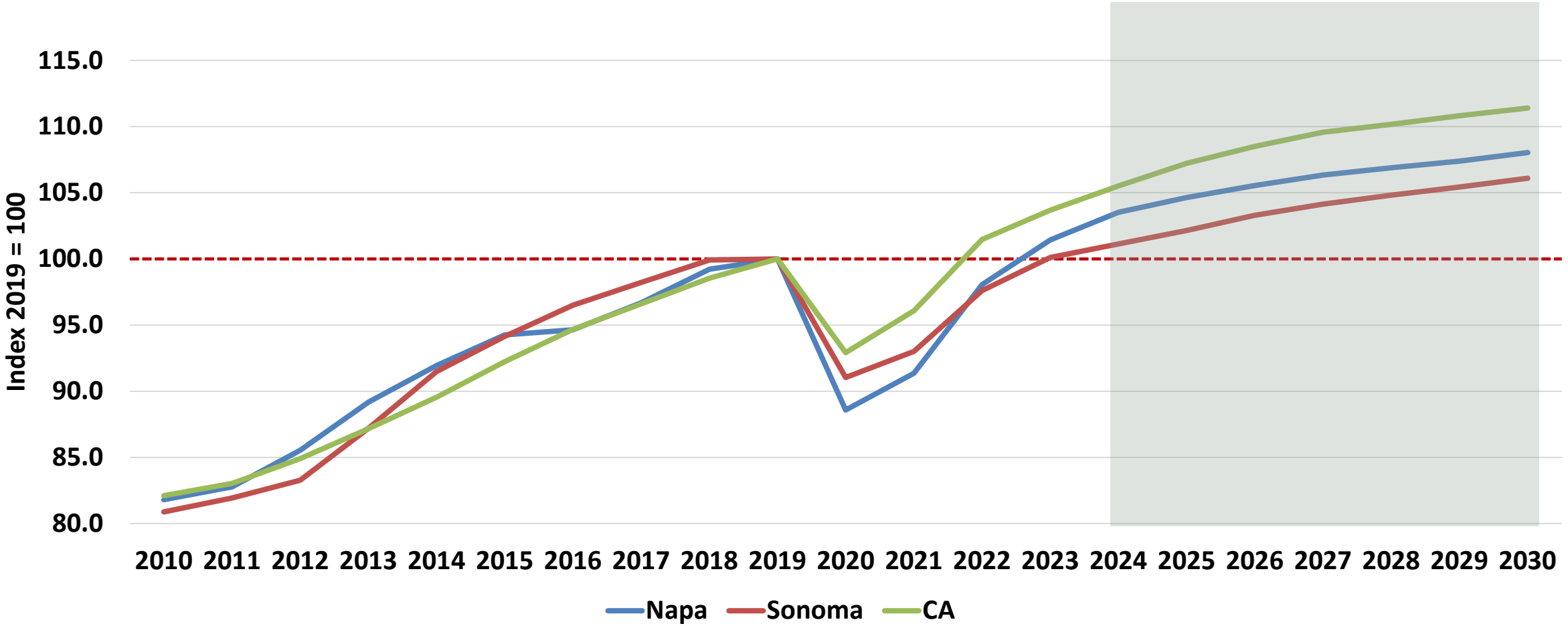
Source: Federal Reserve Philadelphia Branch

Employment and Labor Force and Local Hiring, Napa County, Number of Workers, Jan 2010 to Oct 2023, Seasonally Adjusted



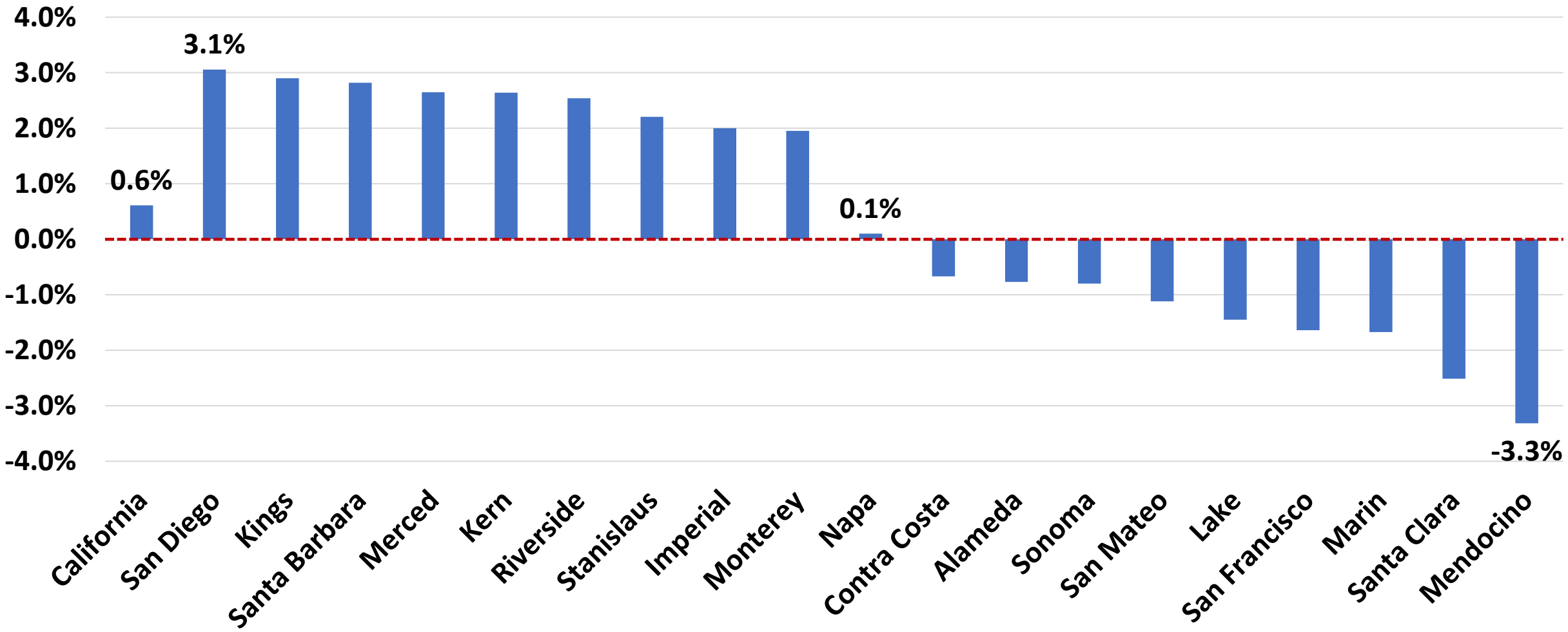
Source: California EDD and EFA

Workers at Local Employers, Napa and Sonoma County and California, 2010 to 2030 Forecasted



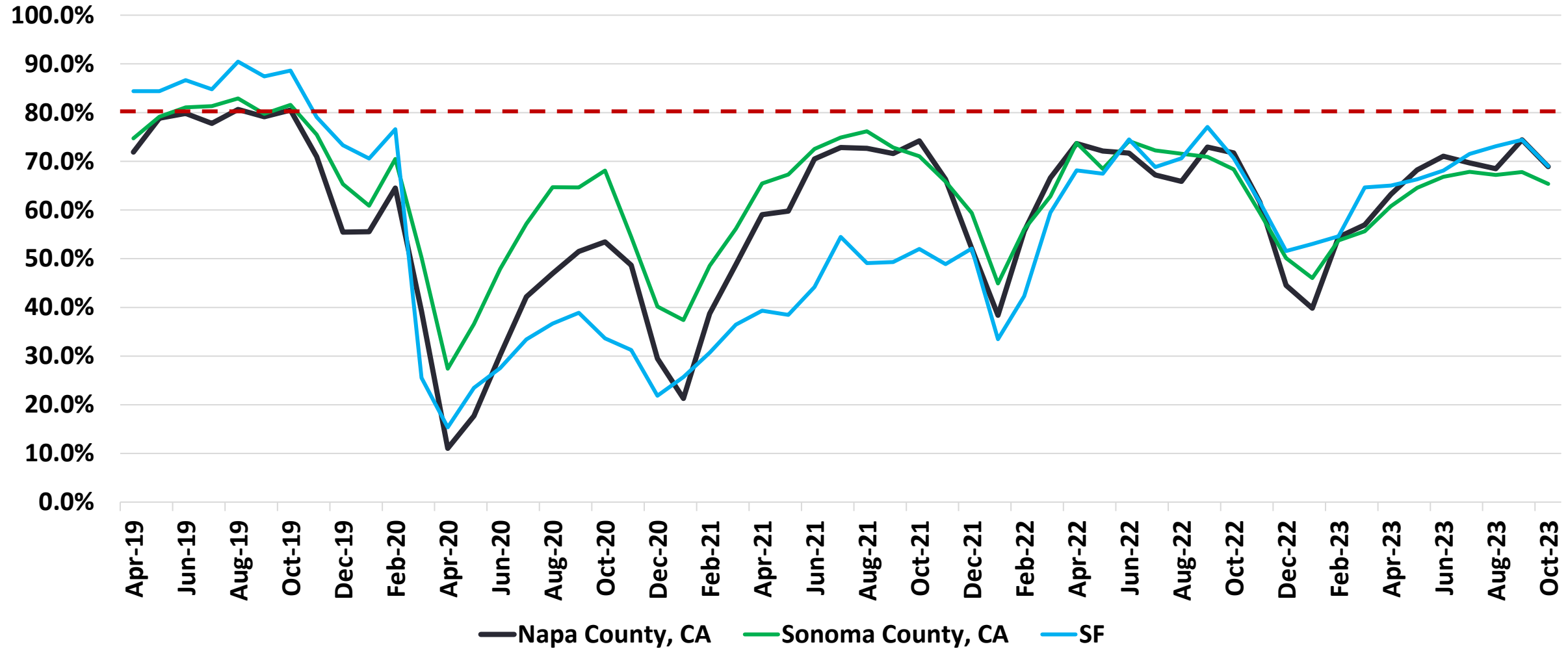
Source: California Department of Finance and CalTrans

Forecasted Median Housing Price Growth, Dec 2023 to Dec 2024, % Change: Napa, CA and Selected Counties (Dec 2023 = $884,600)



Source: Zillow™ Research

Occupancy Rates (%), Selected Counties (Dash at 80%) April 2019 to October 2023, Monthly Averages



Sources: Smith Travel Research and EFA

Travel Forecast and Caveats, Visit California, 2019 = 100 (Forecasted in Bold)

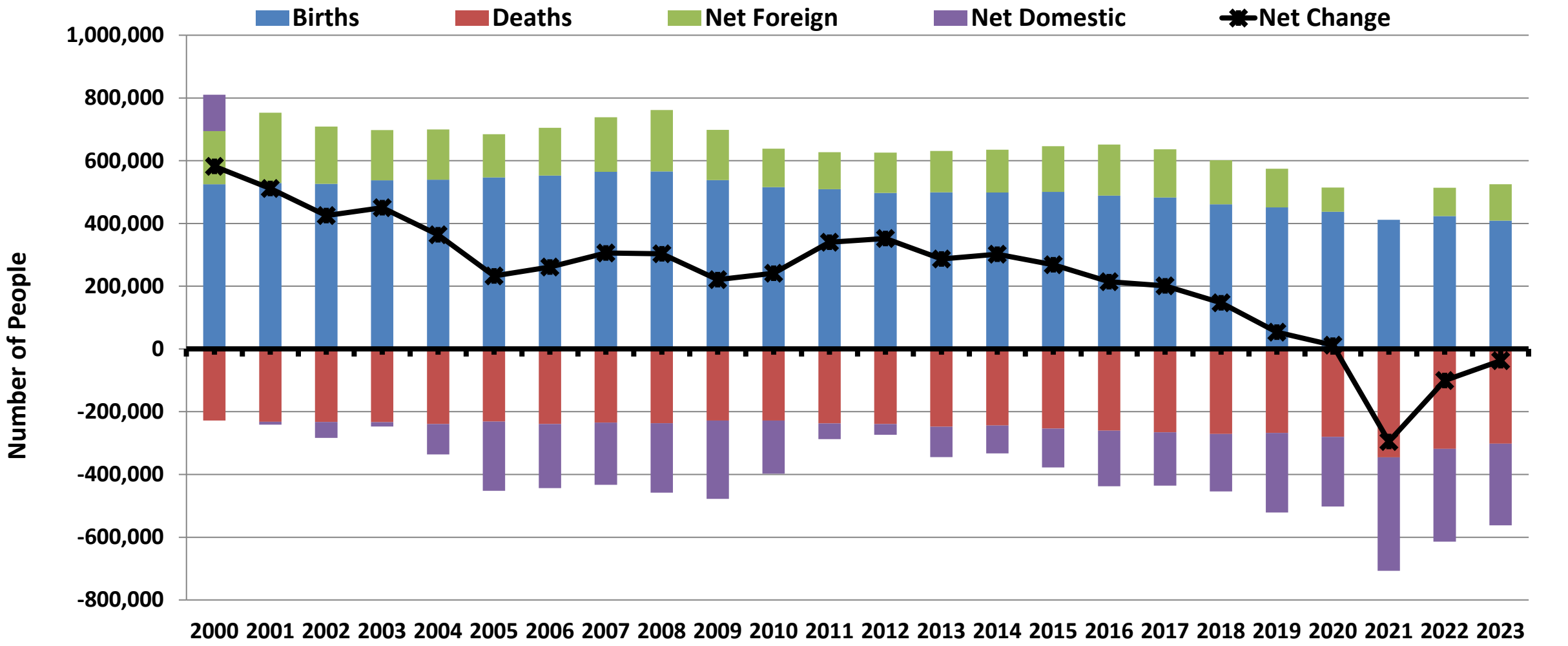
	2020	2021	2022	2023	2024	2025	2026	2027
Total visits	49	75	91	97	**102**	**105**	**108**	**111**
Business	32	49	77	86	**97**	**101**	**105**	**109**
Leisure	53	80	94	99	**103**	**105**	**108**	**111**
Total Travel Spending	47	70	93	107	**115**	**121**	**126**	**130**
Domestic	54	83	101	112	**118**	**124**	**129**	**133**
International	19	19	60	84	**101**	**109**	**115**	**119**

Caveats (basically recovered from pandemic shock)

- Demand slowed in 2023, likely similar in 2024 for Napa
- Economic slowdown mild on travel, especially regional travelers, but spending per traveler likely to fall
- International travel and business travel for Bay Area a big question looking forward

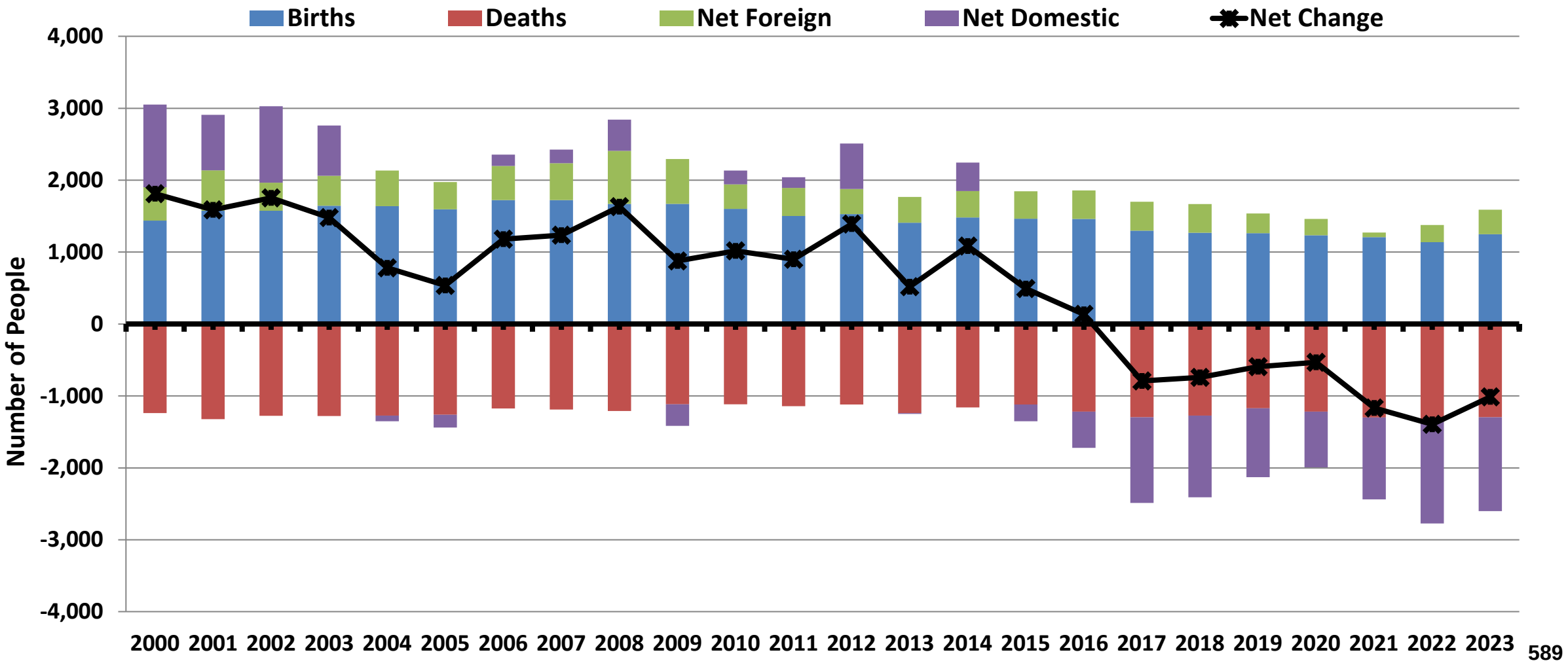
Sources: Tourism Economics and Visit California

Population Change, Main Components
FY 1999-2000 to 2022-23, California, Number of People



Source: California Department of Finance

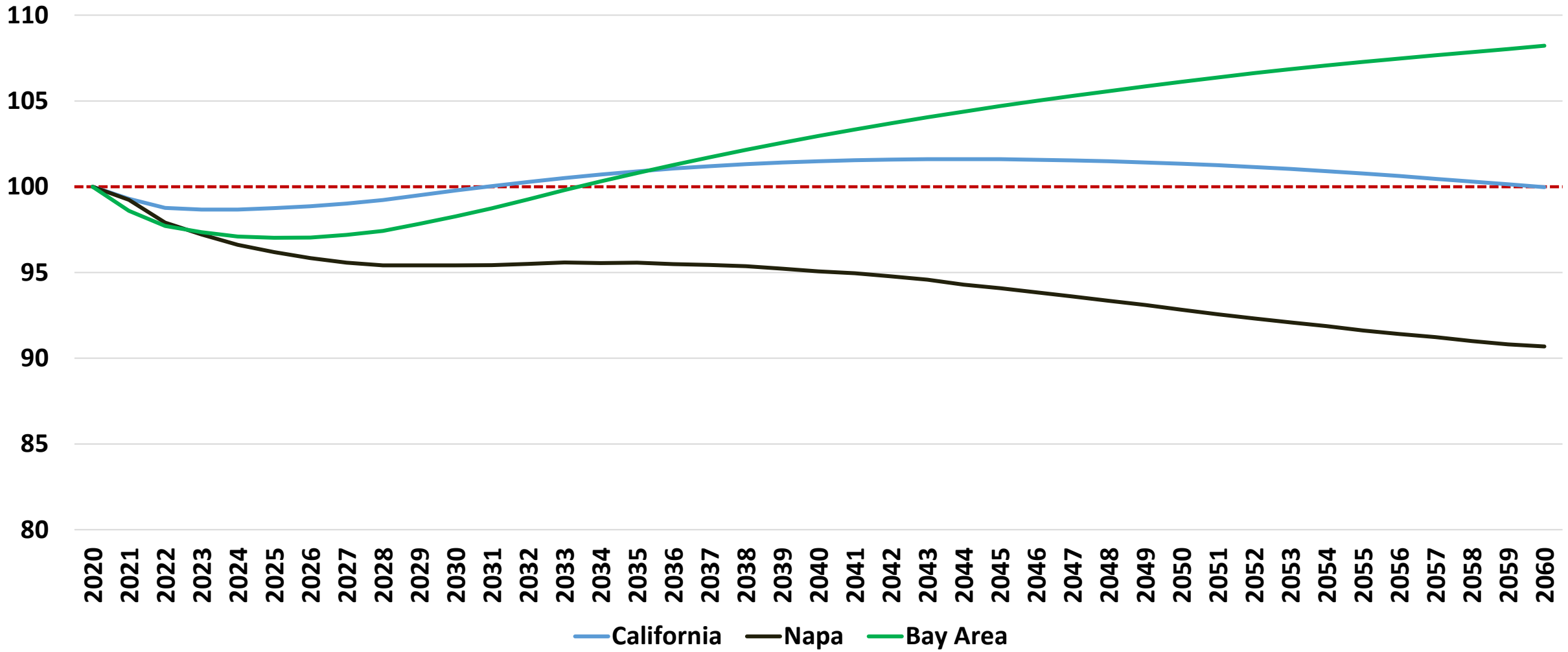
Population Change, Main Components, FY 1999-2000 to 2022-23, Napa County, Number of People (2023 = 2011)



589

Source: California Department of Finance

Population Change, 2020 – 2060, Index 2020 = 100
2023 Version, Marin County, CA and Bay Area



Source: California Dept of Finance

Napa County: 2024 and Beyond

- National economy slower with presidential election and geopolitical uncertainty and interest rate watch to be dominant themes
- Wine industry
  - Does a slower economy and outlook for wine suggest consolidation?
  - Supply-chain effects: warehousing and logistics and vendors
- Tourism
  - 2024 likely a slower year for travelers
  - Recovery faster than expected
- Housing markets
  - Slower pace of housing investment nationally, especially multi-family (connected to commercial RE generally)

EFA Economic Forensics & Analytics

Thanks!
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Napa County

Board Agenda Letter

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-99

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Daniel Sanchez, Senior Management Analyst

SUBJECT: Strategic Financial Plan and Budget Policy

RECOMMENDATION

Approve the Fiscal Year 2024-25 Strategic Financial Plan and Budget Policy. (No Fiscal Impact, Discretionary)

BACKGROUND

As the FY2024-25 budget process begins, the CEO proposes revisions to the Strategic Financial Plan and Budget Policy that will guide staff in developing the FY2024-25 Recommended Budget. The proposed FY2024 -25 budget policies build on prior budget policies, while being updated to reflect the current conditions of the organization. Staff will return in late February with the 5-Year Forecast.

Several substantive changes are proposed this year. Previously the Budget Policy and Strategic Financial Plan were separate documents. Both documents address fundamentally similar issues and consolidation better serves the users. The Strategic Financial Plan and Budget Policy also includes proposed changes:

1. General Reserves are currently 13% of appropriations in operating funds less transfers and is recommended to increase to 15% to reflect approximately two months' operations per Government Finance Officers' Association best practices for entities with stable revenues. Further, staff recommends deletion of Assignment for Fiscal Uncertainty at 10% and Appropriation for Contingency at 3% in all funds except internal service funds because the designations provide no operational or policy benefit. The CEO will recommend the Board retain available fund balance at budget adoption to access when operating needs occur during the year. The Board must take an action to appropriate available fund balance.

2. Recognize Excess Educational Revenue Augmentation Fund in year earned and discontinue treatment as one -time revenue. While the amount does fluctuate, historical data is available for estimation purposes, and the

variance will be positive with conservative estimates.

3. General Fund transfers to the Health and Human Services Agency, Roads, and Fire special revenue operating funds methodology will provide for a minimum amount equal to the prior year's contribution and remove references to specific amounts and formulas. Fire Fund is an addition to this section of the policy to recognize its dependency on the General Fund.

4. General Fund transfers of excess one-time revenues to Capital Reserves will be considered along with reducing liabilities, but not required.

The annual Strategic Financial Plan and Budget Policy works with the 5-Year Forecast to guide the annual Recommended Budget, as well as any mid-year budget adjustments. The Strategic Financial Plan and Budget Policy provides long-term strategies to allow the County to provide services through periods of economic uncertainty and provide consistent application of sound financial principles. The document primarily focuses on the General Fund and certain related operating funds. As a long-term plan, the Strategic Financial Plan and Budget Policy does not attempt to lay out a detailed blueprint for every scenario. It guides the organization to maintain financial stability while continuing essential services and meeting the Board's priorities and has been updated to reflect current market conditions.

The annual 5-Year Forecast will provide the Board with an overview of the General Fund discretionary revenue outlook. The Forecast is based on continuing the existing level of service and known variables. The amounts provided in the 5-Year Forecast are high-level assumptions and are intended to reflect general trends.

The Strategic Financial Plan and Budget Policy is adopted by the Board annually at the beginning of the budget cycle and provide specific direction to staff in developing the Recommended Budget for the coming fiscal year. It provides enough detail to allow staff to adjust the expenditures in the Recommended Budget to the resources that are projected to be available.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The Strategic Financial Plan and Budget Policy guides staff to develop the annual Recommended Budget for the upcoming fiscal year.
Is the general fund affected?	No
Future fiscal impact:	All appropriations will be presented in future budget actions.
Consequences if not approved:	The current Strategic Financial Plan and Budget Policy remain in effect.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.



A Tradition of Stewardship
A Commitment to Service

Napa County 2025
Strategic Financial Plan and Budget Policy

Recommended by the
COUNTY EXECUTIVE OFFICE

January 23, 2024

1. Introduction and Background

The **Strategic Financial Plan and Budget Policy** is intended to be used in conjunction with annual **5-Year Forecast** to guide the annual Recommended Budget, as well as any mid-year budget adjustments.

The **Strategic Financial Plan and Budget Policy** is intended to provide long-term strategies to allow the County to continue to provide services through periods of economic uncertainty and provide consistent application of sound financial principals. The Strategic Financial Plan and Budget Policy focuses on the General Fund and certain related funds. As a long-term plan, the Strategic Financial Plan and Budget Policy does not attempt to lay out a detailed blueprint for everything that will be done, but instead provides the roadmap to maintain financial stability while continuing essential services and allowing the flexibility necessary to respond to significant changes. These potential changes include altering political direction at the state and federal levels, natural disasters, and changes in local or global economics that may impact our community.

The Strategic Financial Plan and Budget Policy has been modified to also provide specific direction to staff to develop the Recommended Budget for the next fiscal year. It provides enough detail to allow staff to adjust the expenditures in the Recommended Budget to the resources projected to be available. These policies also establish priorities should additional resources be available to address unmet needs.

The annual **5-Year Forecast** provides the Board with a representation of the General Fund discretionary revenue outlook, based on continuing the existing level of service and known variables. The figures provided in the 5-Year Forecast are high-level assumptions, and are intended to demonstrate general trends, and are not intended to be preliminary budget figures.

2. Budget Policy Goals

Policy Goals:

Pursue Operational Efficiencies: Combine, reorganize, or eliminate programs/processes to respond to changing needs or priorities. Identify lower priority programs that can be reduced or eliminated to free up resources to fund higher priority programs determined by a four-fifths vote of the Board of Supervisors. Carefully review and justify all expenditure line items to identify possible cost reductions.

Pursue New Revenues: Pursue new revenues and ensure fees charged for services are covering all costs incurred to provide those services. To the extent possible, any new revenues for programs receiving General Fund support shall be used to offset the cost of existing staff and programs, rather than funding new staff or programs. Requests for new positions will be considered only if the new positions are required as the result of a program mandate, are 100% funded by the new revenue source or are a Board priority. If new revenues are limited in duration and require additional staff, limited term positions shall be used.

Maximize the Board's Discretion: Except where the Board has previously made a decision to earmark revenues for a particular purpose, wherever legally possible, revenues should be treated as discretionary resources rather than as dedicated to a particular program or service. The goal is to give the Board as much flexibility as possible in allocating resources to local priorities.

General Fund Policies (includes General Fund Departments and General Fund Contributions to non-General Fund Departments)

Maintain existing service levels: Departments receiving General Fund support shall prepare a budget that maintains the existing service level, any changes to service level must be noted for Board consideration and be aligned with the Board's priorities.

Maintain Sustainable Levels of County Contribution to Non-General Fund Departments or Programs:

a. HHSA Fund: It is the intent for the General Fund to support the existing service level, while the agency continues to maximize the leveraging of State and Federal Funds.
b. The calculated baseline General Fund contribution in the prior fiscal year shall be considered the baseline for calculating the following fiscal year General Fund contribution. The General Fund contribution should be the previous year's General Fund contribution plus the negotiated PSA Cost of Living Adjustment (COLA).
c. IHSS: It is the intent for the General Fund to cover the statutory General Fund obligation to IHSS, with realignment covering the appropriate share.
d. Roads Fund: The General Fund contribution to the Roads fund will be evaluated to determine need based on new funding sources (Measure T and SB1), matching

requirements, and capacity of staff to complete projects. Currently, the County's Maintenance of Effort (MOE) obligation required by the state is $1,294,820.

1. The calculated baseline contribution in FY2023-24 of $4,123,020 is the recommended baseline for FY2024-25.
2. The addition of the Vine Trail in FY2024-25 shall be $80,000 and adjusted by the COLA.

e. Fire Fund: The General Fund contribution shall be at minimum the previous year's General Fund contribution for operations and mitigation plus the negotiated Cost of Living Adjustment (COLA).

f. All Other Funds: Transfers to all other Non-General Fund Departments shall remain consistent with the FY 2023-24 transfer amount unless the transfer amount is based on salary and benefit, e.g., transfer to the Library Fund for the cost of the Library Director. If the transfer is based on salary and benefits, the General Fund contribution shall be increased to cover the increased cost of the applicable salary and benefits.

1. All transfers from the General Fund to Non-General Funds may be considered discretionary until and unless there is a legal obligation that restricts the funds to not be considered part of the General Fund. As such, based on Board Priority at a 4/5th vote, the Board with CEO recommendation, may choose to transfer these available funds for a one-time strategic use.

Fund Balance Assignments: All fund balance assignments shall be reviewed to determine if the need continues to exist or should be cancelled and reallocated to the General Fund's available fund balance or a different assignment.

3. General Fund Strengths and Challenges

The General Fund is the primary operating fund with most of the discretionary revenue coming from property tax, sales tax, and transient occupancy tax (TOT).

Strengths:

The General Fund has remained strong through financial downturns and natural disasters, in part due to the prudent fiscal policies of the County. The Government Finance Officers Association (GFOA) has a "Best Practice" of maintaining at least two months of operating revenues or expenditures in fund balance. The Board shall maintain a General Reserve balance equivalent to 15% of combined operational appropriations for the General Fund and the Health and Human Services Fund.

Challenges:

The State has historically used counties as a significant part of budget "solutions" when resources are insufficient to fund state programs, even during times of growth. The Federal budget continues to be volatile.

The County will likely continue to face future fiscal challenges including:

- Continued and enhanced demand for services and a growing backlog of unmet needs in some areas, particularly fire prevention and capital needs;
- The impact of certain State programs such as CARE Court without sufficient dedicated revenue to fully cover the cost of those programs;
- Increased costs of core county services due to personnel costs; and
- Limited growth in discretionary, semi-discretionary and certain other revenues and the possibility of reduced state revenues for services the County provides on behalf of the state.

4. Philosophy, Guiding Principles and Key Policies

As the only general-purpose local government covering a geographic area that includes cities and special districts – and with responsibility for both countywide and municipal services and for administering various programs on behalf of the state – counties are under pressure to be the funder or service provider of last resort when it comes to local interest and needs. Meanwhile, counties' ability to raise revenue is limited and more constrained by state mandates and requirements than many other local governments. Given this, a key premise of this Strategic Financial Plan and Budget Policy is that:

The County cannot be all things to all people, nor can it be the "government of last resort." We recognize the County's role as a provider of services in keeping with the traditional county model. Although the County is a significant thread in a tapestry of federal, state and local government services, the County must rely on other government organizations, not-for-profit agencies, faith-based organizations, and family institutions to provide the spectrum of services our community requires.

Consequently, a major focus of this Plan is setting priorities for use of limited discretionary resources.

The following outlines the Guiding Principles and key Multi-Year Fiscal Policies that will guide the County in its efforts to ensure fiscal stability. As this is a long-term plan, these principles and policies are intentionally broad to maintain flexibility when there are economic or policy changes.

Guiding Principles

1. The County will maintain sufficient General Fund reserves and fund balance to provide adequate cash flow and avoid the need for short-term borrowing and to provide a hedge against an unanticipated fiscal crisis.

2. The County's emphasis will be on using General Fund discretionary resources to finance "core" County programs. These include traditional County programs or services that state law has made the responsibility of counties and that have historically been funded by local taxpayers.

3. In those cases where a significant need exists and Napa County has determined that the County will not assume responsibility for funding or service delivery, the County may opt to provide advocacy, coordination, technical assistance, and/or start-up financial assistance to aid others in the provision of those necessary services.

4. Except when necessary to respond to emergent or urgent situations, the County will not use one-time or limited duration revenue to fund ongoing operating costs. Instead, one-time or limited duration revenue will be used to meet non-recurring needs, like capital projects or paying down unfunded liabilities.

5. The County's goal is that, on average, **actual** annual General Fund operating expenditures will not exceed operating revenue.

6. In periods of fiscal distress it is appropriate to temporarily use fund balance and/or reserves to help balance the General Fund budget, but only if that use is part of a plan to achieve long-term structural balance, with the goal of achieving structural balance within 24 months.

7. Generally speaking, it is better to do a few things well than many things poorly. The County's goal is to provide high priority services in a professional, effective, and efficient manner, even if it means limiting the number or type of lower priority services provided.

8. The County administers a number of costly state programs that are primarily funded by state and federal dollars. Recognizing the limitations on the County's ability to increase discretionary revenues, in the event of a reduction in resources for these programs, the County's goal, to the extent legally possible, is to not backfill reductions in state and federal dollars with discretionary dollars.

9. To maintain as much flexibility as possible to address priority needs and deal with exigent circumstances, wherever legally possible, revenues are to be treated as discretionary resources, rather than dedicated to a particular program.

10. When charging for services or claiming federal or state revenues, the County's goal is to recover the full cost of services provided, including departmental and county overhead.

11. Generally, it is appropriate to use discretionary resources to fund programs or services that provide a broad public benefit. To the extent legally possible, programs or services that primarily benefit a smaller sub-group should be paid for with user fees or assessments.

12. The County provides countywide services to people who live in all areas of the County and municipal services to residents of the unincorporated area. Because city residents already pay taxes or fees to their cities for municipal services, it is important to ensure that city residents do not subsidize the cost of providing services to residents of the unincorporated area.

13. The County has a fiduciary responsibility to the taxpayers to ensure that public funds are spent only to achieve an appropriate public purpose and that any expenditure of public funds incorporates appropriate control and accountability measures to ensure that the public purpose is being achieved.

14. One-time resources will be spent on one-time expenditures. Revenues which have been received for multiple consecutive years may be treated as on-going revenue.

Key Multi-Year Fiscal Policies

1. General Reserve Policy: Maintain a General Reserve balance equal to 15% of General Fund and Health and Human Services Fund appropriations (not including the General Fund Appropriation for Contingencies and Disaster Response and Recovery, any transfer to the Accumulated Capital Outlay Fund, the General Fund contribution to the Health and Human Services Fund and the General Fund Contribution to Roads). The General Reserve is to be maintained at this level, except in the case of a dire emergency or declared natural disaster.

2. Once the General Reserve requirement is met, and after evaluating all existing and new Assignments, evaluate any remaining General Fund sources to reduce long-term liabilities, as identified in the annual budget policies. Additional Board Priorities may be considered for funding with CEO Recommendation and a 4/5th vote.

3. After evaluating long-term liabilities, consider transferring unappropriated General Fund discretionary resources to the Capital Improvement-Accumulated Capital Outlay (ACO) Fund to be retained to address unmet capital needs. In addition to funding the ACO Fund, select Board Priorities may be considered for funding with CEO Recommendation and a 4/5th vote.

5. Resource Allocation Strategy

The Resource Allocation Strategy should prioritize those services that are to be funded primarily by the General Fund (and discretionary resources) over those services that are to be funded primarily by special revenue funds or other funding mechanisms. Priority shall be given to fully funding existing programs and existing infrastructure.

Outside funding sources:

New or Enhanced Discretionary Programs: Departments shall not propose new or enhanced programs unless those programs are fully funded (including overhead costs) or if the program is required to fulfill a legal mandate. Departments shall not propose new or enhanced programs using one time revenue that may create an ongoing net county cost. Requests must support the Board priorities will be evaluated by the County Executive Office to determine if the increase is financially viable and sustainable.

Funding can be accomplished by 1) a grant or other dedicated revenue source in FY 2024-25 and future years, 2) being included in the planning and implementation of a major capital project, or 3) reallocating resources from a lower priority program to a higher priority program in accordance with the following criteria:

- The investment targets: (a) accountability and regulatory compliance issues; or (b) critical public health and safety needs;
- The request is justified in terms of workload, service demand (include an analysis of the service level impact), and the efficient use of other resources in the relevant department;
- The investment is needed to address a significant County liability; or
- The need shall be sufficiently critical to justify the request.

State and Federal Funding Impacts:
For programs where State or Federal funding has been reduced or eliminated, the County shall not backfill this loss from General Fund sources unless mandated, or the Board of Supervisors has determined the program is a local priority as determined by a four-fifths vote.
If Napa County receives additional State and Federal funding, in support of Napa County's response to emergencies, the funding shall be allocated to the following categories, in no particular order:

- replenish strategic reserves to policy levels
- emergency response, recovery, and planning
- maintain service levels
- reinstate any payments addressing long-term liabilities that were diverted due to emergencies

New Grants: As required by Board Policy Part I, Section 8A, Grants and Revenue Agreements Policy, grant requests shall be sent to the County Executive Office using the

questionnaire attached to the Policy. Budget requests based on new grant funding shall not be included in the Recommended Budget unless the County has received official notification of Grant Award.

In addition to Board Policy Part I, Section 8A, departments must document how funding will be provided for the duration of the program. To the extent legally possible, all grant applications shall be based on full costing, including overhead and indirect costs. Where matching funds are required for grant purposes, departments shall provide as much "in-kind" contribution as allowed, instead of hard-dollar matches. Unless long-term funding is secure, departments should avoid adding staff to support new grant-supported programs. If it is necessary to add staff, limited term positions shall be used.

6. Personnel and Capital Investments

Personnel Policies:

Position Changes: New Positions will not be considered in the FY2024-25 budget unless the positions are funded by secure, on-going, non-General Fund sources. Exceptions may be recommended to the Board of Supervisors by the County Executive Officer based on County's priorities, needs or mandates. As program needs change, Departments can review their current vacant positions to request position changes through the Add/Delete process.

Conversion of Limited Term positions: All Limited Term (LT) positions that are set to expire during the budget year shall be evaluated for deletion, extension of LT, or conversion to permanent positions. Stability of funding source and on-going service level needs shall be considered in this evaluation.

Vacancy Factor: A vacancy factor calculated using historic vacancy rates is required to be calculated for departments with twenty full-time equivalent positions or greater.

Capital Investments:

Capital Reserves: Once General Reserves are funded, and consideration is given to reducing long-term liabilities shown below, consider transferring one-time discretionary resources to the Accumulated Capital Outlay (ACO) Fund to be retained to assist in addressing future capital needs. Transfer monies from the ACO Fund as needed to cover the cost of Major Capital Improvement projects as approved by the Board of Supervisors.

Capital Assets (Including Vehicles): Requests for capital assets may be considered if they can be funded in a manner that does not create an increased Net County Cost; if the Board has previously approved the project or expenditure; if the capital asset is a replacement being made in accordance with an approved replacement schedule; or if there is a health and/or safety need. Requests for new vehicles are strongly discouraged and should be discussed with Fleet Management prior to submission to the CEO's office.

7. Long-term liability reduction policies

Other Post-Employment Benefits (OPEB): Continue to fully fund the County's OPEB liability on a 20-year amortization schedule by transferring funds to an irrevocable trust. Allocate OPEB costs to the relevant County departments based on a State-approved allocation formula.

115 Trust for Pension and OPEB Benefits: Consider available General Fund resources to fund the 115 Trust for Pension and OPEB. The Internal Revenue Code (IRC) 115 Trust, which is administered by the Public Agency Retirement Services (PARS), can only be used to fund future OPEB and pension obligations. The funding goal is a General Fund contribution equivalent to cost sharing contributions made by employees.

Pre-Payment of PERS Costs: Pre-pay the County's annual Public Employee Retirement System (PERS) Miscellaneous employees and safety employees' pension costs, thereby avoiding the costs of interest accrued through the year, as appropriate and to the extent possible.

Other Policies:

Community Investment Fund: In accordance with the Board's Community Investment Fund policies, fiscal conditions permitting, transfer General Fund resources to the Community Investment Fund in an amount equal to 12.5% of the prior calendar year's actual General Fund Transient Occupancy Tax (TOT) revenue. In accordance with the Board's Community Investment Fund policies, the primary focus of Community Investment Fund expenditures will be on programs or services of regional significance related to parks and open space, and arts and culture.

8. Fiscal Contingency Strategy

To the extent that the annual 5-Year Forecast shows that there is a deficit during the five-year projection period, expenditure reductions or other actions may be taken, if needed, to address a significant reduction in resources, as set forth in this Strategy.

The potential components of any fiscal contingency strategy are essentially the same for all local governments: incremental expenditure cuts; major program cuts; identifying and implementing new revenue sources; distinguishing between high priority and lower priority programs; across-the-board funding cuts; etc. The differences come in how these components are structured in any particular jurisdiction (i.e., what happens first, what programs, if any, are exempt from reductions, etc.).

The County's approach to structuring the components of a Fiscal Contingency Strategy is set forth below.

General Philosophy

To the extent possible, across-the-board reductions in expenditures will be avoided. Reductions will be made on a case-by-case basis, focusing particularly (though not exclusively) on discrete programs or services. Maintaining a highly professional service delivery system is of foremost importance to the County. Thus, if it becomes necessary to make significant service level reductions, the goal will be to reduce the quantity of a service provided rather than the quality of service.

Also, it does not necessarily make sense to fund current operations at the expense of long-term capital or planning programs. Consequently, every effort will be made to continue capital and planning programs geared to meeting the County's long-term needs.

Resource Reduction Priorities

Short-term Actions

The following actions will be considered when dealing with the immediate impact of a significant reduction in resources. The purpose of these actions is to achieve immediate savings and/or better position the organization to deal with the impact of longer-term actions once they are implemented. The actions are listed in priority order:

1. Major General Fund-supported office space remodels will be halted, unless they are required to address critical health or safety needs.
2. Purchase of equipment and capital assets will be selectively deferred. Funding source and impact on service delivery will be considered in implementing the deferral.
3. Implementation of new programs not fully operational and/or not fully revenue offset, will be halted.

4. Approval of contracts for services, not fully revenue offset, will be selectively deferred. Funding sources and impact on service delivery will be considered in implementing the deferral.

5. A selective hiring freeze will be implemented.

Longer-Term Actions

The following actions will be considered when dealing with the longer-term impact of a significant reduction in resources. The actions are listed in priority order and lower priority actions will be implemented only if higher priority actions are insufficient to deal with the fiscal shortfall. Once the County's fiscal situation improves, staff will seek direction from the Board on whether to restore funding or otherwise return to the pre-reduction levels.

1. A moratorium will be placed on implementing new programs or expanding existing programs if the cost of those programs or expansions is not fully revenue offset and a secure, long-term funding source is not identified.

2. To the extent legally possible, or where it does not impact the public's health and safety, place a hard freeze on backfilling reductions in federal or state funding, or in using General Fund money to cover cost of doing business increases for programs primarily funded by state or federal resources.

3. Moderate reductions in discretionary support will be made on a case-by-case basis. These reductions will focus first on programs appropriately funded by dedicated resources (such as fee-supported programs where fees are not yet at full cost recovery or state or federal programs where the County provides an over-match). Reductions made at this point will generally have only a limited impact on service levels and may, in some cases, be offset by increases in fees.

4. Discretionary funding for programs appropriately funded by dedicated resources will be significantly reduced or eliminated. This may involve reducing the County match to the minimal mandated level. In the case of programs that are primarily the state's responsibility, the County will consider returning responsibility to the state for operating those programs, to the extent permitted by law. In the case of fee-supported programs where the fee structure does not fully cover program costs, fees will be increased to fully cover those costs.

5. Limit the annual transfer of General Fund revenue to the Community Investment Fund (which is funded by a portion of TOT) as called for in current Board policy to those amounts encumbered by a multi-year contract. Do not enter into any new contracts or renew any contracts for use of Special Projects Fund money.

6. Discretionary resources that have been earmarked by the Board for certain purposes will be reviewed and proposed for re-allocation to fund core County programs.

7. Major program reductions will be proposed in programs appropriately funded with discretionary resources, starting with the lowest priority service areas and moving on to higher priority service areas as needed. Reductions will be made in the following priority order, focusing on maintaining adequate service levels in core programs:

    - Community Resources/Infrastructure

- General Government – Civic Services (excluding services related to property tax assessment, collection, and apportionment)
- Law, Justice, and Public Safety
- Health and Human Services

8. Place a moratorium on all General Fund supported facilities capital improvement projects, other than those needed to address critical health and safety needs. Transfer any unobligated funds in the Accumulated Capital Outlay Fund to the General Fund.

9. A reduced work week or period of unpaid leave may be proposed to achieve salary savings.

9. Revenue Enhancement Strategy

This Revenue Enhancement Strategy describes whether, and how, the County will seek additional revenue to fund needed services.

NEW REVENUE

During the period covered by this Plan, the County will not seek increases in major discretionary revenue sources or new discretionary revenue sources, such as a local option sales tax or an increase in the TOT, unless this is associated with a new program. The County may seek additional funding through:

- Pursuit of grants, though grants will only be pursued for operational funding if the funding is for programs or services the County would otherwise have provided and the grant provides on-going funding or will be used to supplant General Fund resources.
- Increases in fees for fee-supported programs, where the current fees do not fully cover the cost of the program or to keep pace with increases in the cost of doing business.

A Tradition of Stewardship
A Commitment to Service

Napa County 2025
Strategic Financial Plan and Budget Policy

Recommended by the
COUNTY EXECUTIVE OFFICE

January ~~10~~23, ~~2023~~2024

1. Introduction and Background

~~The Napa County Board of Supervisors have adopted multiple budget and financial plans to guide the organization to a strong fiscal status. In 2011, the Board approved a Fund Balance policy that, among other things, confirmed provisions in the Fiscal Contingency Plan that set goals for the General Fund Reserve and the Assignment for Fiscal Uncertainty and specified priorities for use of any remaining available fund balance.~~

The ~~five-year~~ **Strategic Financial Plan** **and Budget Policy** is intended to be used in conjunction with ~~the County's annual **Budget Policies** and the~~ annual **5-Year Forecast** to guide ~~the development of~~ the annual Recommended Budget, as well as any mid-year budget adjustments.

The **Strategic Financial Plan** **and Budget Policy** is intended to provide long-term strategies to allow the County to continue to provide services through periods of economic uncertainty and provide consistent application of sound financial principals. The Strategic Financial Plan and Budget Policy focuses on the General Fund and certain related funds. As a long-term plan, the Strategic Financial Plan and Budget Policy does not attempt to lay out a detailed blueprint for everything that will be done, but instead provides the roadmap to maintain financial stability while continuing essential services~~, meeting the priorities identified in the Strategic Plan,~~ and allowing the flexibility necessary to respond to significant changes. These potential changes include altering political direction at the state and federal levels, natural disasters, and changes in local or global economics that may impact our community.

~~The annual **Budget Policies** are adopted by the Board at the beginning of the budget cycle, and~~ The Strategic Financial Plan and Budget Policy has been modified to also provide specific direction to staff ~~in the~~to develop~~ment of~~ the Recommended Budget for the next fiscal year. ~~They~~ It provide~~s~~ enough detail to allow staff to adjust the expenditures in the Recommended Budget to the resources projected to be available. These policies also establish priorities should additional resources be available to address unmet needs.

The annual **5-Year Forecast** provides the Board with a representation of the General Fund discretionary revenue outlook, based on continuing the existing level of service and known variables. The figures provided in the 5-Year Forecast are high-level assumptions, and are intended to demonstrate general trends, and are not intended to be preliminary budget figures.

2. Budget Policy Goals

Policy Goals:

Pursue Operational Efficiencies: Combine, reorganize, or eliminate programs/processes to respond to changing needs or priorities. Identify lower priority programs that can be reduced or eliminated to free up resources to fund higher priority programs determined by a four-fifths vote of the Board of Supervisors. Carefully review and justify all expenditure line items to identify possible cost reductions.

Pursue New Revenues: Pursue new revenues and ensure fees charged for services are covering all costs incurred to provide those services. To the extent possible, any new revenues for programs receiving General Fund support shall be used to offset the cost of existing staff and programs, rather than funding new staff or programs. Requests for new positions will be considered only if the new positions are required as the result of a program mandate, are 100% funded by the new revenue source or are a Board priority. If new revenues are limited in duration and require additional staff, limited term positions shall be used.

Maximize the Board's Discretion: Except where the Board has previously made a decision to earmark revenues for a particular purpose, wherever legally possible, revenues should be treated as discretionary resources rather than as dedicated to a particular program or service. The goal is to give the Board as much flexibility as possible in allocating resources to local priorities.

General Fund Policies (includes General Fund Departments and General Fund Contributions to non-General Fund Departments)

Maintain existing service levels: Departments receiving General Fund support shall prepare a budget that maintains the existing service level, any changes to service level must be noted for Board consideration and be aligned with the Board's priorities.

Maintain Sustainable Levels of County Contribution to Non-General Fund Departments or Programs:

a. HHSA Fund: It is the intent for the General Fund to support the existing service level, while the agency continues to maximize the leveraging of State and Federal Funds.
b. The calculated baseline General Fund contribution in the prior fiscal year shall be considered the baseline for calculating the following fiscal year General Fund contribution. The General Fund contribution should be the previous year's General Fund contribution plus the negotiated PSA Cost of Living Adjustment (COLA).
c. IHSS: It is the intent for the General Fund to cover the statutory General Fund obligation to IHSS, with realignment covering the appropriate share.
d. Roads Fund: The General Fund contribution to the Roads fund will be evaluated to determine need based on new funding sources (Measure T and SB1), matching

requirements, and capacity of staff to complete projects. Currently, the County's Maintenance of Effort (MOE) obligation required by the state is $1,294,820.

1. The calculated baseline contribution in FY2023-24 of $4,123,020 is the recommended baseline for FY2024-25.
2. The addition of the Vine Trail in FY2024-25 shall be $80,000 and adjusted by the COLA.

e. Fire Fund: The General Fund contribution ~~should~~shall be at minimum the previous year's General Fund contribution for operations and mitigation plus the negotiated Cost of Living Adjustment (COLA).

f. All Other Funds: Transfers to all other Non-General Fund Departments shall remain consistent with the FY 2023-24 transfer amount unless the transfer amount is based on salary and benefit, ~~e.g.~~e.g., transfer to the Library Fund for the cost of the Library Director. If the transfer is based on salary and benefits, the General Fund contribution shall be increased to cover the increased cost of the applicable salary and benefits.

1. All transfers from the General Fund to Non-General Funds may be considered discretionary until and unless there is a legal obligation that restricts the funds to not be considered part of the General Fund. As such, based on Board Priority at a 4/5th vote, the Board with CEO recommendation, may choose to transfer these available funds for a one-time strategic use.

Fund Balance Assignments: All fund balance assignments shall be reviewed to determine if the need continues to exist or should be cancelled and reallocated to the General Fund's available fund balance or a different assignment.

~~2.~~3. General Fund Strengths and Challenges

The General Fund is the primary operating fund with most of the discretionary revenue coming from property tax, sales tax, and transient occupancy tax (TOT).

Strengths:

The General Fund has remained strong through financial downturns and natural disasters, in part due to the prudent fiscal policies of the County. The Government Finance Officers Association (GFOA) has a "Best Practice" of maintaining at least two months of operating revenues or expenditures in fund balance. ~~the Board has established two strategies to maintain fund balance at appropriate levels. The first of these strategies~~The Board shall maintain ~~is a **General Reserve** policy that maintains~~ a General Reserve balance equivalent to ~~10~~15% of combined operational appropriations for the General Fund and the Health and Human Services Fund. ~~The second strategy is to maintain 13~~7% ~~of General Fund operational appropriations available to meet immediate needs. This is accomplished through the combination of two actions. The first action is to include an Appropriation for Contingencies of 3~~2% ~~of the General Fund operational appropriations as part of the adopted budget. The second action is to maintain an Assignment for Fiscal Uncertainty balance in the General Fund of no less than 10~~7%, ~~and the combined total of Appropriation for Contingencies and Assignment for Fiscal Uncertainty shall be no less than 13% of the General Fund operational appropriations. In addition to these, the Board also maintains a **Health and Human Services Assignment for Fiscal Uncertainty** balance of 10~~7% ~~of operational appropriations, less the intra-fund transfers.~~

Challenges:

~~The State of California continues to be in a period of revenue growth. While this is a positive sign, t~~The State has historically used counties as a significant part of budget "solutions" when resources are insufficient to fund state programs, even during times of growth. The Federal budget continues to be volatile.

~~By the end of FY 2022-23, the economy continued to recover well after the COVID-19 pandemic. The unemployment rate in Napa County remained low, yet the state and nation faced significant economic uncertainty. Inflation has remained at a decades-long high, with efforts to control inflation creating uncertainty in the stock market.~~

The County will likely continue to face future fiscal challenges including:

- Continued and enhanced demand for services and a growing backlog of unmet needs in some areas, particularly fire prevention and capital needs;
- The impact of certain State programs such as CARE Court without sufficient dedicated revenue to fully cover the cost of those programs;

- Increased costs of core county services due to ~~wage inflation~~~~employee~~personnel costs; and
- Limited growth in discretionary, semi-discretionary and certain other revenues and the possibility of reduced state revenues for services the County provides on behalf of the state.

~~Napa County has experienced numerous natural disasters, which have a direct impact on the General Fund including response and recovery costs, damage to County-owned infrastructure, and the potential loss in property tax, sales tax, and TOT revenues. A portion of the cost of response and recovery is eligible for funding by the Federal Emergency Management Agency (FEMA) and the California Office of Emergency Services (Cal-OES) and in the case of the earthquake, insurance proceeds. The General Fund has used General Reserves for providing cash flow for disaster response and recovery since the receipt of FEMA and Cal-OES funding is delayed for months (sometimes years), and then is reserved pending the completion of audits.~~

~~3.~~4. Philosophy, Guiding Principles and Key Policies

As the only general-purpose local government covering a geographic area that includes cities and special districts – and with responsibility for both countywide and municipal services and for administering various programs on behalf of the state – counties are under pressure to be the funder or service provider of last resort when it comes to local interest and needs. Meanwhile, counties' ability to raise revenue is limited and more constrained by state mandates and requirements than many other local governments. Given this, a key premise of this Strategic Financial Plan and Budget Policy is that:

The County cannot be all things to all people, nor can it be the "government of last resort." We recognize the County's role as a provider of services in keeping with the traditional county model. Although the County is a significant thread in a tapestry of federal, state and local government services, the County must rely on other government organizations, not-for-profit agencies, faith-based organizations, and family institutions to provide the spectrum of services our community requires.

Consequently, a major focus of this Plan is setting priorities for use of limited discretionary resources.

The following outlines the Guiding Principles and key Multi-Year Fiscal Policies that will guide the County in its efforts to ensure fiscal stability. ~~sustainability over the five-year period covered in the Plan. These will guide the development of the Budget Policies, which are adopted by the Board annually~~. As this is a long-term plan, these principles and policies are intentionally broad to maintain flexibility when there are economic or policy changes.

Guiding Principles

1. The County will maintain sufficient General Fund reserves and fund balance to provide ~~for~~ adequate cash flow and avoid the need for short-term borrowing and to provide a hedge against an unanticipated fiscal crisis.

2. The County's emphasis will be on using General Fund discretionary resources to finance "core" County programs. These include traditional County programs or services that state law has made the responsibility of counties and that have historically been funded by local taxpayers.

3. In those cases where a significant need exists and Napa County has determined that the County will not assume responsibility for funding or service delivery, the County may opt to provide advocacy, coordination, technical assistance, and/or start-up financial assistance to aid others in the provision of those necessary services.

4. Except when necessary to respond to emergent or urgent situations, the County will not use one-time or limited duration revenue to fund ongoing operating costs. Instead, one-time or limited duration revenue will be used to meet non-recurring needs, like capital projects or paying down unfunded liabilities.

5. ~~Over the five-year planning period, except in times of fiscal distress, the~~The County's goal is that, on average, **actual** annual General Fund operating expenditures will not exceed operating revenue.

6. In periods of fiscal distress it is appropriate to temporarily use fund balance and/or reserves to help balance the General Fund budget, but only if that use is part of a plan to achieve long-term structural balance, with the goal of achieving structural balance within 24 months.

7. Generally speaking, it is better to do a few things well than many things poorly. The County's goal is to provide high priority services in a professional, effective, and efficient manner, even if it means limiting the number or type of lower priority services provided.

8. The County administers a number of costly state programs that are primarily funded by state and federal dollars. Recognizing the limitations on the County's ability to increase discretionary revenues, in the event of a reduction in resources for these programs, the County's goal, to the extent legally possible, is to not backfill reductions in state and federal dollars with discretionary dollars.

9. To maintain as much flexibility as possible to address priority needs and deal with exigent circumstances, wherever legally possible, revenues are to be treated as discretionary resources, rather than dedicated to a particular program.

10. When charging for services or claiming federal or state revenues, the County's goal is to recover the full cost of services provided, including departmental and county overhead.

11. Generally, it is appropriate to use discretionary resources to fund programs or services that provide a broad public benefit. To the extent legally possible, programs or services that primarily benefit a smaller sub-group should be paid for with user fees or assessments.

12. The County provides countywide services to people who live in all areas of the County and municipal services to residents of the unincorporated area. Because city residents already pay taxes or fees to their cities for municipal services, it is important to ensure that city residents do not subsidize the cost of providing services to residents of the unincorporated area.

13. The County has a fiduciary responsibility to the taxpayers to ensure that public funds are spent only to achieve an appropriate public purpose and that any expenditure of public funds incorporates appropriate control and accountability measures to ensure that the public purpose is being achieved.

14. One-time resources ~~(including fund balance and Excess ERAF revenue)~~ will be spent on one-time expenditures ~~in accordance with the Budget Policies~~. Revenues which ~~ave~~have been received for multiple consecutive years may be treated as on-going revenue.

Key Multi-Year Fiscal Policies ~~– FY 2020-212024-25 through FY 2024-252027-28~~

1. General Reserve Policy: Maintain a General Reserve balance equal to ~~10~~7~~15~~% of General Fund and Health and Human Services Fund appropriations (not including the General Fund Appropriation for Contingencies and Disaster Response and Recovery, any transfer to the Accumulated Capital Outlay Fund, the General Fund contribution to the Health and Human Services Fund and the General Fund Contribution to Roads). The General Reserve is to be maintained at this level ~~at all times~~, except in the case of a dire ~~fiscal~~ emergency or declared natural disaster.

~~2. Maintain 137% of General Fund operational appropriations available to meet immediate needs. This is accomplished through the combination of two actions. The first action is to include an Appropriation for Contingencies of 32% of the General Fund operational appropriations as part of the adopted budget. The second action is to maintain an Assignment for Fiscal Uncertainty balance in the General Fund of no less than 107%, and the combined total of Appropriation for Contingencies and Assignment for Fiscal Uncertainty shall be no less than 137% of the General Fund operational appropriations.~~

~~3. Health and Human Services Assignment for Fiscal Uncertainty Policy: Strive to maintain an Assignment for Fiscal Uncertainty in the Health and Human Services Fund of 107% of the Health and Human Services Fund appropriations less any intra-fund transfers. In times of fiscal distress, including the loss of state and/or federal revenues for priority programs, these funds can be used to help balance the Health and Human Services Fund budget as part of a plan to achieve long-term structural balance in that fund. Any plan to achieve long-term structural balance should include a provision to replenish the Assignment for Fiscal Uncertainty balance to the 107% level in the Health and Human Services Fund.~~

~~4.~~2. Once the General Reserve ~~and the General Fund Assignment for Fiscal Uncertainty~~ requirement ~~s are~~ is met, and after evaluating all existing and new Assignments, evaluate any remaining General Fund sources to reduce long-term liabilities, as identified in the annual budget policies. Additional Board Priorities may be considered for funding with CEO Recommendation and a 4/5th vote.

~~5.~~3. After evaluating long-term liabilities, consider transferring ~~any remaining~~ unappropriated General Fund discretionary resources to the Capital Improvement ~~-~~Accumulated Capital Outlay (ACO) Fund to be retained to address unmet capital needs. In addition to funding the ACO Fund, select Board Priorities may be considered for funding with CEO Recommendation and a 4/5th vote.

~~4.~~5. Resource Allocation Strategy

The Resource Allocation Strategy should prioritize those services that are to be funded primarily by the General Fund (and discretionary resources) over those services that are to be funded primarily by special revenue funds or other funding mechanisms. Priority shall be given to fully funding existing programs and existing infrastructure.

Outside funding sources:

New or Enhanced Discretionary Programs: Departments shall not propose new or enhanced programs unless those programs are fully funded (including overhead costs) or if the program is required to fulfill a legal mandate. Departments shall not propose new or enhanced programs using one time revenue that may create an ongoing net county cost. Requests must support the Board priorities will be evaluated by the County Executive Office to determine if the increase is financially viable and sustainable.

Funding can be accomplished by 1) a grant or other dedicated revenue source in FY 2024-25 and future years, 2) being included in the planning and implementation of a major capital project, or 3) reallocating resources from a lower priority program to a higher priority program in accordance with the following criteria:

- The investment targets: (a) accountability and regulatory compliance issues; or (b) critical public health and safety needs;
- The request is justified in terms of workload, service demand (include an analysis of the service level impact), and the efficient use of other resources in the relevant department;
- The investment is needed to address a significant County liability; or
- The need shall be sufficiently critical to justify the request.

State and Federal Funding Impacts:
For programs where State or Federal funding has been reduced or eliminated, the County shall not backfill this loss from General Fund sources unless mandated, or the Board of Supervisors has determined the program is a local priority as determined by a four-fifths vote.
If Napa County receives additional State and Federal funding, in support of Napa County's response to emergencies, the funding shall be allocated to the following categories, in no particular order:

- replenish strategic reserves to policy levels
- emergency response, recovery, and planning
- maintain service levels
- reinstate any payments addressing long-term liabilities that were diverted due to emergencies

New Grants: As required by Board Policy Part I, Section 8A, Grants and Revenue Agreements Policy, grant requests shall be sent to the County Executive Office using the

questionnaire attached to the Policy. Budget requests based on new grant funding shall not be included in the Recommended Budget unless the County has received official notification of Grant Award.

In addition to Board Policy Part I, Section 8A, departments must document how funding will be provided for the duration of the program. To the extent legally possible, all grant applications shall be based on full costing, including overhead and indirect costs. Where matching funds are required for grant purposes, departments shall provide as much "in-kind" contribution as allowed, instead of hard-dollar matches. Unless long-term funding is secure, departments should avoid adding staff to support new grant-supported programs. If it is necessary to add staff, limited term positions shall be used.

6. Personnel and Capital Investments

Personnel Policies:

Position Changes: New Positions will not be considered in the FY2024-25 budget unless the positions are funded by secure, on-going, non-General Fund sources. Exceptions may be recommended to the Board of Supervisors by the County Executive Officer based on County's priorities, needs or mandates. As program needs change, Departments can review their current vacant positions to request position changes through the Add/Delete process.

Conversion of Limited Term positions: All Limited Term (LT) positions that are set to expire during the budget year shall be evaluated for deletion, extension of LT, or conversion to permanent positions. Stability of funding source and on-going service level needs shall be considered in this evaluation.

Vacancy Factor: A vacancy factor calculated using historic vacancy rates is required to be calculated for departments with twenty full-time equivalent positions or greater.

Capital Investments:

Capital Reserves: Once General Reserves ~~and Assignment for Fiscal Uncertainties~~ are funded ~~consistent with the Strategic Financial Plan~~, and consideration is given to reducing long-term liabilities shown below, consider transferring one-time ~~any remaining~~ discretionary resources to the Accumulated Capital Outlay (ACO) Fund to be retained to assist in addressing future capital needs. Transfer monies from the ACO Fund as needed to cover the cost of Major Capital Improvement projects as approved by the Board of Supervisors.

Capital Assets (Including Vehicles): Requests for capital assets may be considered if they can be funded in a manner that does not create an increased Net County Cost; if the Board has previously approved the project or expenditure; if the capital asset is a replacement being made in accordance with an approved replacement schedule; ~~or, if~~or if there is a health and/or safety need. Requests for new vehicles are strongly discouraged and should be discussed with Fleet Management prior to submission to the CEO's office.

7. Long-term liability reduction policies

Other Post-Employment Benefits (OPEB): Continue to fully fund the County's OPEB liability on a 20-year amortization schedule by transferring funds to an irrevocable trust. Allocate OPEB costs to the relevant County departments based on a State-approved allocation formula.

115 Trust for Pension and OPEB Benefits: Consider available General Fund resources to fund the 115 Trust for Pension and OPEB. The Internal Revenue Code (IRC) 115 Trust, which is administered by the Public Agency Retirement Services (PARS), can only be used to fund future OPEB and pension obligations. The funding goal is a General Fund contribution equivalent to cost sharing contributions made by employees.

Pre-Payment of PERS Costs: Pre-pay the County's annual Public Employee Retirement System (PERS) Miscellaneous employees and safety employees' pension costs, thereby avoiding the costs of interest accrued through the year, as appropriate and to the extent possible.

Other Policies:

Community Investment Fund: In accordance with the Board's Community Investment Fund policies, fiscal conditions permitting, transfer General Fund resources to the Community Investment Fund in an amount equal to 12.5% of the prior calendar year's actual General Fund Transient Occupancy Tax (TOT) revenue. In accordance with the Board's Community Investment Fund policies, the primary focus of Community Investment Fund expenditures will be on programs or services of regional significance related to parks and open space, and arts and culture.

~~5.~~ 8. Fiscal Contingency Strategy

To the extent that the annual 5-Year Forecast shows that there is a deficit during the five-year projection period, expenditure reductions or other actions may be taken, if needed, to address a significant reduction in resources, as set forth in this Strategy.

The potential components of any fiscal contingency strategy are essentially the same for all local governments: incremental expenditure cuts; major program cuts; identifying and implementing new revenue sources; distinguishing between high priority and lower priority programs; across-the-board funding cuts; etc. The differences come in how these components are structured in any particular jurisdiction (i.e., what happens first, what programs, if any, are exempt from reductions, etc.).

The County's approach to structuring the components of a Fiscal Contingency Strategy is set forth below.

General Philosophy

To the extent possible, across-the-board reductions in expenditures will be avoided. Reductions will be made on a case-by-case basis, focusing particularly (though not exclusively) on discrete programs or services. Maintaining a highly professional service delivery system is of foremost importance to the County. Thus, if it becomes necessary to make significant service level reductions, the goal will be to reduce the quantity of a service provided rather than the quality of service.

Also, it does not necessarily make sense to fund current operations at the expense of long-term capital or planning programs. Consequently, every effort will be made to continue capital and planning programs geared to meeting the County's long-term needs.

Resource Reduction Priorities

Short-term Actions

The following actions will be considered when dealing with the immediate impact of a significant reduction in resources. The purpose of these actions is to achieve immediate savings and/or better position the organization to deal with the impact of longer-term actions once they are implemented. The actions are listed in priority order:

1. Major General Fund-supported office space remodels will be halted, unless they are required to address critical health or safety needs.

2. Purchase of equipment and capital assets will be selectively deferred. Funding source and impact on service delivery will be considered in implementing the deferral.

3. Implementation of new programs not fully operational and/or not fully revenue offset, will be halted.

4. Approval of contracts for services, not fully revenue offset, will be selectively deferred. Funding sources and impact on service delivery will be considered in implementing the deferral.

5. A selective hiring freeze will be implemented.

Longer-Term Actions

The following actions will be considered when dealing with the longer-term impact of a significant reduction in resources. The actions are listed in priority order and lower priority actions will be implemented only if higher priority actions are insufficient to deal with the fiscal shortfall. Once the County's fiscal situation improves, staff will seek direction from the Board on whether to restore funding or otherwise return to the pre-reduction levels.

1. A moratorium will be placed on implementing new programs or expanding existing programs if the cost of those programs or expansions is not fully revenue offset and a secure, long-term funding source is not identified.

2. To the extent legally possible, or where it does not impact the public's health and safety, place a hard freeze on backfilling reductions in federal or state funding, or in using General Fund money to cover cost of doing business increases for programs primarily funded by state or federal resources.

3. Moderate reductions in discretionary support will be made on a case-by-case basis. These reductions will focus first on programs appropriately funded by dedicated resources (such as fee-supported programs where fees are not yet at full cost recovery or state or federal programs where the County provides an over-match). Reductions made at this point will generally have only a limited impact on service levels and may, in some cases, be offset by increases in fees.

4. Discretionary funding for programs appropriately funded by dedicated resources will be significantly reduced or eliminated. This may involve reducing the County match to the minimal mandated level. In the case of programs that are primarily the state's responsibility, the County will consider returning responsibility to the state for operating those programs, to the extent permitted by law. In the case of fee-supported programs where the fee structure does not fully cover program costs, fees will be increased to fully cover those costs.

5. Limit the annual transfer of General Fund revenue to the ~~Special Projects~~Community Investment Fund (which is funded by a portion of TOT) as called for in current Board policy to those amounts encumbered by a multi-year contract. Do not enter into any new contracts or renew any contracts for use of Special Projects Fund money.

6. Discretionary resources that have been earmarked by the Board for certain purposes will be reviewed and proposed for re-allocation to fund core County programs.

7. Major program reductions will be proposed in programs appropriately funded with discretionary resources, starting with the lowest priority service areas and moving on to higher priority service areas as needed. Reductions will be made in the following priority order, focusing on maintaining adequate service levels in core programs:

- Community Resources/Infrastructure
- General Government – Civic Services (excluding services related to property tax assessment, collection, and apportionment)
- Law, ~~Justice~~Justice, and Public Safety
- Health and Human Services

8. Place a moratorium on all General Fund supported facilities capital improvement projects, other than those needed to address critical health and safety needs. Transfer any unobligated funds in the Accumulated Capital Outlay Fund to the General Fund.

9. A reduced work week or period of unpaid leave may be proposed to achieve salary savings.

~~6.~~ 9. Revenue Enhancement Strategy

This Revenue Enhancement Strategy describes whether, and how, the County will seek additional revenue to fund needed services.

NEW REVENUE

During the period covered by this Plan, the County will not seek increases in major discretionary revenue sources or new discretionary revenue sources, such as a local option sales tax or an increase in the TOT, unless this is associated with a new program ~~(such as commercial cannabis)~~. The County may seek additional funding through:

- Pursuit of grants, though grants will only be pursued for operational funding if the funding is for programs or services the County would otherwise have provided and the grant provides on-going funding or will be used to supplant General Fund resources.
- Increases in fees for fee-supported programs, where the current fees do not fully cover the cost of the program or to keep pace with increases in the cost of doing business.

A Tradition of Stewardship
A Commitment to Service

County Executive Office

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Ryan J. Alsop
County Executive Officer

MEMORANDUM

To:	Board of Supervisors	From:	Daniel Sanchez, Senior Management Analyst
Date:	23 January 2024	Re:	11 B –Approve the Fiscal Year 2024-25 Strategic Financial Plan and Budget Policy

Change Recommendation To:
Approve the Fiscal Year 2024-25 Annual Budget Policy Guidelines. (No Fiscal Impact, Discretionary)

Replace the previous Board Report with new Board Report.

Replace previous attachments with new attachments.

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Daniel Sanchez, Senior Management Analyst

SUBJECT: Annual Budget Policy Guidelines

RECOMMENDATION

Approve the Fiscal Year 2024-25 Annual Budget Policy Guidelines. (No Fiscal Impact, Discretionary)

BACKGROUND

As the FY2024-25 budget process begins, the CEO proposes revisions to Annual Budget Policy Guidelines that will guide staff in developing the FY2024-25 Recommended Budget. The proposed FY2024-25 budget policies build on prior budget policies, while being updated to reflect the current conditions of the organization. Staff will return in late February with the 5-Year Forecast.

Several substantive changes are proposed this year. Previously the Budget Policy and Strategic Financial Plan were separate documents. Both documents address fundamentally similar issues and consolidation better serves the users. The Annual Budget Policy Guidelines also includes proposed changes:

1. General Reserves are currently 13% of appropriations in operating funds less transfers and is recommended to increase to 15% to reflect approximately two months' operations per Government Finance Officers' Association best practices for entities with stable revenues. Further, staff recommends deletion of Assignment for Fiscal Uncertainty at 10% and Appropriation for Contingency at 3% in all funds except internal service funds because the designations provide no operational or policy benefit. The CEO will recommend the Board retain available fund balance at budget adoption to access when operating needs occur during the year. The Board must take an action to appropriate available fund balance.
2. Recognize Excess Educational Revenue Augmentation Fund in year earned and discontinue treatment as one-time revenue. While the amount does fluctuate, historical data is available for estimation purposes, and the variance will be positive with conservative estimates.
3. General Fund transfers to the Health and Human Services Agency, Roads, and Fire special revenue operating funds methodology will provide for a minimum amount equal to the prior year's contribution and remove references to specific amounts and formulas. Fire Fund is an addition to this section of the policy to recognize its dependency on the General Fund.
4. General Fund transfers of excess one-time revenues to Capital Reserves will be considered along with reducing liabilities, but not required.

The Annual Budget Policy Guidelines works with the 5-Year Forecast to guide the annual Recommended Budget, as well as any mid-year budget adjustments. The Annual Budget Policy Guidelines provide long-term strategies to allow the County to provide services through periods of economic uncertainty and provide consistent application of sound financial principles. The document primarily focuses on the General Fund and

certain related operating funds. As a long-term plan, the Annual Budget Policy Guidelines do not attempt to lay out a detailed blueprint for every scenario. It guides the organization to maintain financial stability while continuing essential services and meeting the Board's priorities and has been updated to reflect current market conditions.

The annual 5-Year Forecast will provide the Board with an overview of the General Fund discretionary revenue outlook. The Forecast is based on continuing the existing level of service and known variables. The amounts provided in the 5-Year Forecast are high-level assumptions and are intended to reflect general trends.

The Annual Budget Policy Guidelines are adopted by the Board annually at the beginning of the budget cycle and provide specific direction to staff in developing the Recommended Budget for the coming fiscal year. It provides enough detail to allow staff to adjust the expenditures in the Recommended Budget to the resources that are projected to be available.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The Annual Budget Policy Guidelines direct staff to create the annual Recommended Budget for the upcoming fiscal year.
Is the general fund affected?	No
Future fiscal impact:	All appropriations will be presented in future budget actions.
Consequences if not approved:	The current Strategic Financial Plan and Budget Policy remain in effect.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

A Tradition of Stewardship
A Commitment to Service

Napa County 2025
~~Strategic Financial Plan~~
Annual Budget Policy Guidelines

Recommended by the
COUNTY EXECUTIVE OFFICE

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1. Introduction and Background

~~The Napa County Board of Supervisors have adopted multiple budget and financial plans to guide the organization to a strong fiscal status. In 2011, the Board approved a Fund Balance policy that, among other things, confirmed provisions in the Fiscal Contingency Plan that set goals for the General Fund Reserve and the Assignment for Fiscal Uncertainty and specified priorities for use of any remaining available fund balance.~~

The ~~five-year **Strategic Financial Plan**~~**Annual Budget Policy Guidelines** are~~is~~ intended to be used in conjunction with ~~the County's annual **Budget Policies** and the~~ annual **5-Year Forecast** to guide ~~the development of~~ the annual Recommended Budget, as well as any mid-year budget adjustments.

The ~~**Strategic Financial Plan**~~**Annual Budget Policy Guidelines** are~~is~~ intended to provide long-term strategies to allow the County to continue to provide services through periods of economic uncertainty and provide consistent application of sound financial ~~principals~~principles. The ~~Strategic Financial Plan~~Annual Budget Policy Guidelines are focused~~s~~ on the General Fund and certain related funds. As a long-term plan, the ~~Strategic Financial Plan~~Annual Budget Policy Guidelines does not attempt to lay out a detailed blueprint for everything that will be done, but instead provides the roadmap to maintain financial stability while continuing essential services~~, meeting the priorities identified in the Strategic Plan,~~ and allowing the flexibility necessary to respond to significant changes. These potential changes include altering political direction at the state and federal levels, natural disasters, and changes in local or global economics that may impact our community.

~~The annual **Budget Policies** are adopted by the Board at the beginning of the budget cycle, and~~ The Annual Budget Policy Guidelines have been modified to also provide specific direction to staff ~~in the~~to develop~~ment of~~ the Recommended Budget for the next fiscal year. ~~They~~ It provide~~s~~ enough detail to allow staff to adjust the expenditures in the Recommended Budget to the resources projected to be available. These policies also establish priorities should additional resources be available to address unmet needs.

The annual **5-Year Forecast** provides the Board with a representation of the General Fund discretionary revenue outlook, based on continuing the existing level of service and known variables. The figures provided in the 5-Year Forecast are high-level assumptions, and are intended to demonstrate general trends, and are not intended to be preliminary budget figures.

2. Policy Goals

Policy Goals:

Pursue Operational Efficiencies: Combine, reorganize, or eliminate programs/processes to respond to changing needs or priorities. Identify lower priority programs that can be reduced or eliminated to free up resources to fund higher priority programs determined by a 4/5th vote of the Board of Supervisors. Carefully review and justify all expenditure line items to identify possible cost reductions.

Pursue New Revenues: Pursue new revenues and ensure fees charged for services are covering all costs incurred to provide those services. To the extent possible, any new revenues for programs receiving General Fund support shall be used to offset the cost of existing staff and programs, rather than funding new staff or programs. Requests for new positions will be considered only if the new positions are required as the result of a program mandate, are 100% funded by the new revenue source or are a Board priority. If new revenues are limited in duration and require additional staff, limited term positions shall be used.

Maximize the Board's Discretion: Except where the Board has previously made a decision to earmark revenues for a particular purpose, wherever legally possible, revenues should be treated as discretionary resources rather than as dedicated to a particular program or service. The goal is to give the Board as much flexibility as possible in allocating resources to local priorities.

General Fund Policies (includes General Fund Departments and General Fund Contributions to non-General Fund Departments)

Maintain existing service levels: Departments receiving General Fund support shall prepare a budget that maintains the existing service level, any changes to service level must be noted for Board consideration and be aligned with the Board's priorities.

Maintain Sustainable Levels of County Contribution to Non-General Fund Departments or Programs:

a. HHSA Fund: It is the intent for the General Fund to support the existing service level, while the agency continues to maximize the leveraging of State and Federal Funds.
b. The calculated baseline General Fund contribution in the prior fiscal year shall be considered the baseline for calculating the following fiscal year General Fund contribution. The General Fund contribution should be the previous year's General Fund contribution plus the negotiated Cost of Living Adjustment (COLA).
c. IHSS: It is the intent for the General Fund to cover the statutory General Fund obligation to IHSS, with realignment covering the appropriate share.
d. Roads Fund: The General Fund contribution to the Roads fund will be evaluated to determine need based on new funding sources (Measure T and SB1), matching

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requirements, and capacity of staff to complete projects. Currently, the County's Maintenance of Effort (MOE) obligation required by the state is $1,294,820.

1. The calculated baseline contribution in FY2023-24 of $4,123,020 is the recommended baseline for FY2024-25.
2. The addition of the Vine Trail in FY2024-25 shall be $80,000 and adjusted by the COLA.

e. Fire Fund: The General Fund contribution ~~should~~shall be at minimum the previous year's General Fund contribution for operations and mitigation plus the negotiated Cost of Living Adjustment (COLA).

f. All Other Funds: Transfers to all other Non-General Fund Departments shall remain consistent with the FY 2023-24 transfer amount unless the transfer amount is based on salary and benefit, ~~e.g.~~e.g., transfer to the Library Fund for the cost of the Library Director. If the transfer is based on salary and benefits, the General Fund contribution shall be increased to cover the increased cost of the applicable salary and benefits.

1. All transfers from the General Fund to Non-General Funds may be considered discretionary until and unless there is a legal obligation that restricts the funds to not be considered part of the General Fund. As such, based on Board Priority at a 4/5th vote, the Board with CEO recommendation, may choose to transfer these available funds for a one-time strategic use.

Fund Balance Assignments: All fund balance assignments shall be reviewed to determine if the need continues to exist or should be cancelled and reallocated to the General Fund's available fund balance or a different assignment.

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~~2.~~3. General Fund Strengths and Challenges

The General Fund is the primary operating fund with most of the discretionary revenue coming from property tax, sales tax, and transient occupancy tax (TOT).

Strengths:

The General Fund has remained strong through financial downturns and natural disasters, in part due to the prudent fiscal policies of the County. The Government Finance Officers Association (GFOA) has a "Best Practice" of maintaining at least two months of operating revenues or expenditures in fund balance. ~~the Board has established two strategies to maintain fund balance at appropriate levels. The first of these strategies~~The Board shall maintain ~~is a **General Reserve** policy that maintains~~ a General Reserve balance equivalent to ~~10~~715% of combined operational appropriations for the General Fund and the Health and Human Services Fund. ~~The second strategy is to maintain 137% of General Fund operational appropriations available to meet immediate needs. This is accomplished through the combination of two actions. The first action is to include an Appropriation for Contingencies of 32% of the General Fund operational appropriations as part of the adopted budget. The second action is to maintain an Assignment for Fiscal Uncertainty balance in the General Fund of no less than 107%, and the combined total of Appropriation for Contingencies and Assignment for Fiscal Uncertainty shall be no less than 13% of the General Fund operational appropriations. In addition to these, the Board also maintains a **Health and Human Services Assignment for Fiscal Uncertainty** balance of 107% of operational appropriations, less the intra-fund transfers.~~

Challenges:

~~The State of California continues to be in a period of revenue growth. While this is a positive sign, t~~The State has historically used counties as a significant part of budget "solutions" when resources are insufficient to fund state programs, even during times of growth. The Federal budget continues to be volatile.

~~By the end of FY 2022-23, the economy continued to recover well after the COVID-19 pandemic. The unemployment rate in Napa County remained low, yet the state and nation faced significant economic uncertainty. Inflation has remained at a decades-long high, with efforts to control inflation creating uncertainty in the stock market.~~

The County will likely continue to face future fiscal challenges including:

- Continued and enhanced demand for services and a growing backlog of unmet needs in some areas, particularly fire prevention and capital needs;
- The impact of certain State programs such as CARE Court without sufficient dedicated revenue to fully cover the cost of those programs;
- Increased costs of core county services due to ~~wage inflation~~~~employee~~personnel costs; and
- Limited growth in discretionary, semi-discretionary and certain other revenues and the possibility of reduced state revenues for services the County provides on behalf of the state.

Napa County has experienced numerous natural disasters, which have a direct impact on the General Fund including response and recovery costs, damage to County-owned infrastructure, and the potential loss in property tax, sales tax, and TOT revenues. A portion of the cost of response and recovery is eligible for funding by the Federal Emergency Management Agency (FEMA) and the California Office of Emergency Services (Cal-OES) and in the case of the earthquake, insurance proceeds. The General Fund has used General Reserves for providing cash flow for disaster response and recovery since the receipt of FEMA and Cal-OES funding is delayed for months (sometimes years), and then is reserved pending the completion of audits.

~~3.~~4. Philosophy, Guiding Principles and Key Policies

As the only general-purpose local government covering a geographic area that includes cities and special districts – and with responsibility for both countywide and municipal services and for administering various programs on behalf of the state – counties are under pressure to be the funder or service provider of last resort when it comes to local interest and needs. Meanwhile, counties' ability to raise revenue is limited and more constrained by state mandates and requirements than many other local governments. Given this, a key premise of this Annual Budget Policy Guidelines ~~Strategic Financial Plan~~ ~~are is~~is that:

The County cannot be all things to all people, nor can it be the "government of last resort." We recognize the County's role as a provider of services in keeping with the traditional county model. Although the County is a significant thread in a tapestry of federal, state and local government services, the County must rely on other government organizations, not-for-profit agencies, faith-based organizations, and family institutions to provide the spectrum of services our community requires.

Consequently, a major focus of this Plan is setting priorities for use of limited discretionary resources.

The following outlines the Guiding Principles and key Multi-Year Fiscal Policies that will guide the County in its efforts to ensure fiscal stability. ~~sustainability over the five-year period covered in the Plan. These will guide the development of the Budget Policies, which are adopted by the Board annually~~. As this is a long-term plan, these principles and policies are intentionally broad to maintain flexibility when there are economic or policy changes.

Guiding Principles

1. The County will maintain sufficient General Fund reserves and fund balance to provide ~~for~~ adequate cash flow and avoid the need for short-term borrowing and to provide a hedge against an unanticipated fiscal crisis.

2. The County's emphasis will be on using General Fund discretionary resources to finance "core" County programs. These include traditional County programs or services that state law has made the responsibility of counties and that have historically been funded by local taxpayers.

3. In those cases where a significant need exists and Napa County has determined that the County will not assume responsibility for funding or service delivery, the County may opt to provide advocacy, coordination, technical assistance, and/or start-up financial assistance to aid others in the provision of those necessary services.

4. Except when necessary to respond to emergent or urgent situations, the County will not use one-time or limited duration revenue to fund ongoing operating costs. Instead, one-time or limited duration revenue will be used to meet non-recurring needs, like capital projects or paying down unfunded liabilities.

5. ~~Over the five-year planning period, except in times of fiscal distress, the~~The County's goal is that, on average, **actual** annual General Fund operating expenditures will not exceed operating revenue.

6. In periods of fiscal distress it is appropriate to temporarily use fund balance and/or reserves to help balance the General Fund budget, but only if that use is part of a plan to achieve long-term structural balance, with the goal of achieving structural balance within 24 months.

7. Generally speaking, it is better to do a few things well than many things poorly. The County's goal is to provide high priority services in a professional, effective, and efficient manner, even if it means limiting the number or type of lower priority services provided.

8. The County administers a number of costly state programs that are primarily funded by state and federal dollars. Recognizing the limitations on the County's ability to increase discretionary revenues, in the event of a reduction in resources for these programs, the County's goal, to the extent legally possible, is to not backfill reductions in state and federal dollars with discretionary dollars.

9. To maintain as much flexibility as possible to address priority needs and deal with exigent circumstances, wherever legally possible, revenues are to be treated as discretionary resources, rather than dedicated to a particular program.

10. When charging for services or claiming federal or state revenues, the County's goal is to recover the full cost of services provided, including departmental and county overhead.

11. Generally, it is appropriate to use discretionary resources to fund programs or services that provide a broad public benefit. To the extent legally possible, programs or services that primarily benefit a smaller sub-group should be paid for with user fees or assessments.

12. The County provides countywide services to people who live in all areas of the County and municipal services to residents of the unincorporated area. Because city residents already pay taxes or fees to their cities for municipal services, it is important to ensure that city residents do not subsidize the cost of providing services to residents of the unincorporated area.

13. The County has a fiduciary responsibility to the taxpayers to ensure that public funds are spent only to achieve an appropriate public purpose and that any expenditure of public funds incorporates appropriate control and accountability measures to ensure that the public purpose is being achieved.

14. One-time resources ~~(including fund balance and Excess ERAF revenue)~~ will be spent on one-time expenditures ~~in accordance with the Budget Policies~~. Revenues which ~~ave~~have been received for multiple consecutive years may be treated as on-going revenue.

Key Multi-Year Fiscal Policies ~~– FY 2020-212024-25 through FY 2024-252027-28~~

1. General Reserve Policy: Maintain a General Reserve balance equal to ~~107~~15% of General Fund and Health and Human Services Fund appropriations (not including the General Fund Appropriation for Contingencies and Disaster Response and Recovery, any transfer to the Accumulated Capital Outlay Fund, the General Fund contribution to the Health and Human Services Fund and the General Fund Contribution to Roads and the Fire Fund). The General Reserve is to be maintained at this level ~~at all times~~, except in the case of a dire ~~fiscal~~ emergency or declared natural disaster.

~~2. Maintain 137% of General Fund operational appropriations available to meet immediate needs. This is accomplished through the combination of two actions. The first action is to include an Appropriation for Contingencies of 32% of the General Fund operational appropriations as part of the adopted budget. The second action is to maintain an Assignment for Fiscal Uncertainty balance in the General Fund of no less than 107%, and the combined total of Appropriation for Contingencies and Assignment for Fiscal Uncertainty shall be no less than 137% of the General Fund operational appropriations.~~

~~3. Health and Human Services Assignment for Fiscal Uncertainty Policy: Strive to maintain an Assignment for Fiscal Uncertainty in the Health and Human Services Fund of 107% of the Health and Human Services Fund appropriations less any intra-fund transfers. In times of fiscal distress, including the loss of state and/or federal revenues for priority programs, these funds can be used to help balance the Health and Human Services Fund budget as part of a plan to achieve long-term structural balance in that fund. Any plan to achieve long-term structural balance should include a provision to replenish the Assignment for Fiscal Uncertainty balance to the 107% level in the Health and Human Services Fund.~~

~~4.~~2. Once the General Reserve ~~and the General Fund Assignment for Fiscal Uncertainty~~ requirement ~~s are~~ is met, and after evaluating all existing and new Assignments, evaluate any remaining General Fund sources to reduce long-term liabilities, as identified in the annual budget policies. Additional Board Priorities may be considered for funding with CEO Recommendation and a 4/5th vote.

~~5.~~3. After evaluating long-term liabilities, consider transferring ~~any remaining~~ unappropriated General Fund discretionary resources to the Capital Improvement-Accumulated Capital Outlay (ACO) Fund to be retained to address unmet capital needs. In addition to funding the ACO Fund, select Board Priorities may be considered for funding with CEO Recommendation and a 4/5th vote.

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~~4.~~5. Resource Allocation Strategy

The Resource Allocation Strategy should prioritize those services that are to be funded primarily by the General Fund (and discretionary resources) over those services that are to be funded primarily by special revenue funds or other funding mechanisms. Priority shall be given to fully funding existing programs and existing infrastructure.

Outside funding sources:

New or Enhanced Discretionary Programs: Departments shall not propose new or enhanced programs unless those programs are fully funded (including overhead costs) or if the program is required to fulfill a legal mandate. Departments shall not propose new or enhanced programs using one time revenue that may create an ongoing net county cost. Requests must support the Board priorities will be evaluated by the County Executive Office to determine if the increase is financially viable and sustainable.

Funding can be accomplished by 1) a grant or other dedicated revenue source in FY 2024-25 and future years, 2) being included in the planning and implementation of a major capital project, or 3) reallocating resources from a lower priority program to a higher priority program in accordance with the following criteria:

- The investment targets: (a) accountability and regulatory compliance issues; or (b) critical public health and safety needs;
- The request is justified in terms of workload, service demand (include an analysis of the service level impact), and the efficient use of other resources in the relevant department;
- The investment is needed to address a significant County liability; or
- The need shall be sufficiently critical to justify the request.

State and Federal Funding Impacts:
For programs where State or Federal funding has been reduced or eliminated, the County shall not backfill this loss from General Fund sources unless mandated, or the Board of Supervisors has determined the program is a local priority as determined by a 4/5th vote.
If Napa County receives additional State and Federal funding, in support of Napa County's response to emergencies, the funding shall be allocated to the following categories, in no particular order:

- replenish strategic reserves to policy levels
- emergency response, recovery, and planning
- maintain service levels
- reinstate any payments addressing long-term liabilities that were diverted due to emergencies

New Grants: As required by Board Policy Part I, Section 8A, Grants and Revenue Agreements Policy, grant requests shall be sent to the County Executive Office using the

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questionnaire attached to the Policy. Budget requests based on new grant funding shall not be included in the Recommended Budget unless the County has received official notification of Grant Award.

In addition to Board Policy Part I, Section 8A, departments must document how funding will be provided for the duration of the program. To the extent legally possible, all grant applications shall be based on full costing, including overhead and indirect costs. Where matching funds are required for grant purposes, departments shall provide as much "in-kind" contribution as allowed, instead of hard-dollar matches. Unless long-term funding is secure, departments should avoid adding staff to support new grant-supported programs. If it is necessary to add staff, limited term positions shall be used.

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6. Personnel and Capital Investments

Personnel Policies:

Position Changes: New Positions will not be considered in the FY2024-25 budget unless the positions are funded by secure, on-going, non-General Fund sources. Exceptions may be recommended to the Board of Supervisors by the County Executive Officer based on County's priorities, needs or mandates. As program needs change, Departments can review their current vacant positions to request position changes through the Add/Delete process.

Conversion of Limited Term positions: All Limited Term (LT) positions that are set to expire during the budget year shall be evaluated for deletion, extension of LT, or conversion to permanent positions. Stability of funding source and on-going service level needs shall be considered in this evaluation.

Vacancy Factor: A vacancy factor calculated using historic vacancy rates is required to be calculated for departments with twenty full-time equivalent positions or greater.

Capital Investments:

Capital Reserves: Once General Reserves ~~and Assignment for Fiscal Uncertainties~~ are funded ~~consistent with the Strategic Financial Plan~~, and consideration is given to reducing long-term liabilities shown below, consider transferring one-time ~~any remaining~~ discretionary resources to the Accumulated Capital Outlay (ACO) Fund to be retained to assist in addressing future capital needs. Transfer monies from the ACO Fund as needed to cover the cost of Major Capital Improvement projects as approved by the Board of Supervisors.

Capital Assets (Including Vehicles): Requests for capital assets may be considered if they can be funded in a manner that does not create an increased Net County Cost; if the Board has previously approved the project or expenditure; if the capital asset is a replacement being made in accordance with an approved replacement schedule; ~~or, if~~or if there is a health and/or safety need. Requests for new vehicles are strongly discouraged and should be discussed with Fleet Management prior to submission to the CEO's office.

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7. Long-term liability reduction policies

Other Post-Employment Benefits (OPEB): Continue to fully fund the County's OPEB liability on a 20-year amortization schedule by transferring funds to an irrevocable trust. Allocate OPEB costs to the relevant County departments based on a State-approved allocation formula.

115 Trust for Pension and OPEB Benefits: Consider available General Fund resources to fund the 115 Trust for Pension and OPEB. The Internal Revenue Code (IRC) 115 Trust, which is administered by the Public Agency Retirement Services (PARS), can only be used to fund future OPEB and pension obligations. The funding goal is a General Fund contribution equivalent to cost sharing contributions made by employees.

Pre-Payment of PERS Costs: Pre-pay the County's annual Public Employee Retirement System (PERS) Miscellaneous employees and safety employees' pension costs, thereby avoiding the costs of interest accrued through the year, as appropriate and to the extent possible.

Other Policies:

Community Investment Fund: In accordance with the Board's Community Investment Fund policies, fiscal conditions permitting, transfer General Fund resources to the Community Investment Fund in an amount equal to 12.5% of the prior calendar year's actual General Fund Transient Occupancy Tax (TOT) revenue. In accordance with the Board's Community Investment Fund policies, the primary focus of Community Investment Fund expenditures will be on programs or services of regional significance related to parks and open space, and arts and culture.

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~~5.~~ 8. Fiscal Contingency Strategy

To the extent that the annual 5-Year Forecast shows that there is a deficit during the five-year projection period, expenditure reductions or other actions may be taken, if needed, to address a significant reduction in resources, as set forth in this Strategy.

The potential components of any fiscal contingency strategy are essentially the same for all local governments: incremental expenditure cuts; major program cuts; identifying and implementing new revenue sources; distinguishing between high priority and lower priority programs; across-the-board funding cuts; etc. The differences come in how these components are structured in any particular jurisdiction (i.e., what happens first, what programs, if any, are exempt from reductions, etc.).

The County's approach to structuring the components of a Fiscal Contingency Strategy is set forth below.

General Philosophy

To the extent possible, across-the-board reductions in expenditures will be avoided. Reductions will be made on a case-by-case basis, focusing particularly (though not exclusively) on discrete programs or services. Maintaining a highly professional service delivery system is of foremost importance to the County. Thus, if it becomes necessary to make significant service level reductions, the goal will be to reduce the quantity of a service provided rather than the quality of service.

Also, it does not necessarily make sense to fund current operations at the expense of long-term capital or planning programs. Consequently, every effort will be made to continue capital and planning programs geared to meeting the County's long-term needs.

Resource Reduction Priorities

Short-term Actions

The following actions will be considered when dealing with the immediate impact of a significant reduction in resources. The purpose of these actions is to achieve immediate savings and/or better position the organization to deal with the impact of longer-term actions once they are implemented. The actions are listed in priority order:

1. Major General Fund-supported office space remodels will be halted, unless they are required to address critical health or safety needs.

2. Purchase of equipment and capital assets will be selectively deferred. Funding source and impact on service delivery will be considered in implementing the deferral.

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3. Implementation of new programs not fully operational and/or not fully revenue offset, will be halted.

4. Approval of contracts for services, not fully revenue offset, will be selectively deferred. Funding sources and impact on service delivery will be considered in implementing the deferral.

5. A selective hiring freeze will be implemented.

Longer-Term Actions

The following actions will be considered when dealing with the longer-term impact of a significant reduction in resources. The actions are listed in priority order and lower priority actions will be implemented only if higher priority actions are insufficient to deal with the fiscal shortfall. Once the County's fiscal situation improves, staff will seek direction from the Board on whether to restore funding or otherwise return to the pre-reduction levels.

1. A moratorium will be placed on implementing new programs or expanding existing programs if the cost of those programs or expansions is not fully revenue offset and a secure, long-term funding source is not identified.

2. To the extent legally possible, or where it does not impact the public's health and safety, place a hard freeze on backfilling reductions in federal or state funding, or in using General Fund money to cover cost of doing business increases for programs primarily funded by state or federal resources.

3. Moderate reductions in discretionary support will be made on a case-by-case basis. These reductions will focus first on programs appropriately funded by dedicated resources (such as fee-supported programs where fees are not yet at full cost recovery or state or federal programs where the County provides an over-match). Reductions made at this point will generally have only a limited impact on service levels and may, in some cases, be offset by increases in fees.

4. Discretionary funding for programs appropriately funded by dedicated resources will be significantly reduced or eliminated. This may involve reducing the County match to the minimal mandated level. In the case of programs that are primarily the state's responsibility, the County will consider returning responsibility to the state for operating those programs, to the extent permitted by law. In the case of fee-supported programs where the fee structure does not fully cover program costs, fees will be increased to fully cover those costs.

5. Limit the annual transfer of General Fund revenue to the ~~Special Projects~~Community Investment Fund (which is funded by a portion of TOT) as called for in current Board policy to those amounts encumbered by a multi-year contract. Do not enter into any new contracts or renew any contracts for use of ~~Special Projects Fund~~Community Investment Fund money.

6. Discretionary resources that have been earmarked by the Board for certain purposes will be reviewed and proposed for re-allocation to fund core County programs.

7. Major program reductions will be proposed in programs appropriately funded with discretionary resources, starting with the lowest priority service areas and moving on to higher priority service areas as needed. Reductions will be made in the following priority order, focusing on maintaining adequate service levels in core programs:

- Community Resources/Infrastructure
- General Government – Civic Services (excluding services related to property tax assessment, collection, and apportionment)
- Law, ~~Justice~~Justice, and Public Safety
- Health and Human Services

8. Place a moratorium on all General Fund supported facilities capital improvement projects, other than those needed to address critical health and safety needs. Transfer any unobligated funds in the Accumulated Capital Outlay Fund to the General Fund.

9. A reduced work week or period of unpaid leave may be proposed to achieve salary savings.

~~6.~~ 9. Revenue Enhancement Strategy

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This Revenue Enhancement Strategy describes whether, and how, the County will seek additional revenue to fund needed services.

NEW REVENUE

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During the period covered by this Plan, the County will not seek increases in major discretionary revenue sources or new discretionary revenue sources, such as a local option sales tax or an increase in the TOT, unless this is associated with a new program ~~(such as commercial cannabis)~~. The County may seek additional funding through:

- Pursuit of grants, though grants will only be pursued for operational funding if the funding is for programs or services the County would otherwise have provided and the grant provides on-going funding or will be used to supplant General Fund resources.
- Increases in fees for fee-supported programs, where the current fees do not fully cover the cost of the program or to keep pace with increases in the cost of doing business.

A Tradition of Stewardship
A Commitment to Service

Napa County 2025
Annual Budget Policy Guidelines

Recommended by the
COUNTY EXECUTIVE OFFICE

January 23, 2024

1. Introduction and Background

The **Annual Budget Policy Guidelines** are intended to be used in conjunction with annual **5-Year Forecast** to guide the annual Recommended Budget, as well as any mid-year budget adjustments.

The **Annual Budget Policy Guidelines** are intended to provide long-term strategies to allow the County to continue to provide services through periods of economic uncertainty and provide consistent application of sound financial principles. The Annual Budget Policy Guidelines are focused on the General Fund and certain related funds. As a long-term plan, the Annual Budget Policy Guidelines does not attempt to lay out a detailed blueprint for everything that will be done, but instead provides the roadmap to maintain financial stability while continuing essential services and allowing the flexibility necessary to respond to significant changes. These potential changes include altering political direction at the state and federal levels, natural disasters, and changes in local or global economics that may impact our community.

The Annual Budget Policy Guidelines have been modified to also provide specific direction to staff to develop the Recommended Budget for the next fiscal year. It provides enough detail to allow staff to adjust the expenditures in the Recommended Budget to the resources projected to be available. These policies also establish priorities should additional resources be available to address unmet needs.

The annual **5-Year Forecast** provides the Board with a representation of the General Fund discretionary revenue outlook, based on continuing the existing level of service and known variables. The figures provided in the 5-Year Forecast are high-level assumptions, and are intended to demonstrate general trends, and are not intended to be preliminary budget figures.

2. Policy Goals

Policy Goals:

Pursue Operational Efficiencies: Combine, reorganize, or eliminate programs/processes to respond to changing needs or priorities. Identify lower priority programs that can be reduced or eliminated to free up resources to fund higher priority programs determined by a 4/5th vote of the Board of Supervisors. Carefully review and justify all expenditure line items to identify possible cost reductions.

Pursue New Revenues: Pursue new revenues and ensure fees charged for services are covering all costs incurred to provide those services. To the extent possible, any new revenues for programs receiving General Fund support shall be used to offset the cost of existing staff and programs, rather than funding new staff or programs. Requests for new positions will be considered only if the new positions are required as the result of a program mandate, are 100% funded by the new revenue source or are a Board priority. If new revenues are limited in duration and require additional staff, limited term positions shall be used.

Maximize the Board's Discretion: Except where the Board has previously made a decision to earmark revenues for a particular purpose, wherever legally possible, revenues should be treated as discretionary resources rather than as dedicated to a particular program or service. The goal is to give the Board as much flexibility as possible in allocating resources to local priorities.

General Fund Policies (includes General Fund Departments and General Fund Contributions to non-General Fund Departments)

Maintain existing service levels: Departments receiving General Fund support shall prepare a budget that maintains the existing service level, any changes to service level must be noted for Board consideration and be aligned with the Board's priorities.

Maintain Sustainable Levels of County Contribution to Non-General Fund Departments or Programs:

a. HHSA Fund: It is the intent for the General Fund to support the existing service level, while the agency continues to maximize the leveraging of State and Federal Funds.
b. The calculated baseline General Fund contribution in the prior fiscal year shall be considered the baseline for calculating the following fiscal year General Fund contribution. The General Fund contribution should be the previous year's General Fund contribution plus the negotiated Cost of Living Adjustment (COLA).
c. IHSS: It is the intent for the General Fund to cover the statutory General Fund obligation to IHSS, with realignment covering the appropriate share.
d. Roads Fund: The General Fund contribution to the Roads fund will be evaluated to determine need based on new funding sources (Measure T and SB1), matching

requirements, and capacity of staff to complete projects. Currently, the County's Maintenance of Effort (MOE) obligation required by the state is $1,294,820.

1. The calculated baseline contribution in FY2023-24 of $4,123,020 is the recommended baseline for FY2024-25.
2. The addition of the Vine Trail in FY2024-25 shall be $80,000 and adjusted by the COLA.

e. Fire Fund: The General Fund contribution shall be at minimum the previous year's General Fund contribution for operations and mitigation plus the negotiated Cost of Living Adjustment (COLA).

f. All Other Funds: Transfers to all other Non-General Fund Departments shall remain consistent with the FY 2023-24 transfer amount unless the transfer amount is based on salary and benefit, e.g., transfer to the Library Fund for the cost of the Library Director. If the transfer is based on salary and benefits, the General Fund contribution shall be increased to cover the increased cost of the applicable salary and benefits.

1. All transfers from the General Fund to Non-General Funds may be considered discretionary until and unless there is a legal obligation that restricts the funds to not be considered part of the General Fund. As such, based on Board Priority at a 4/5th vote, the Board with CEO recommendation, may choose to transfer these available funds for a one-time strategic use.

Fund Balance Assignments: All fund balance assignments shall be reviewed to determine if the need continues to exist or should be cancelled and reallocated to the General Fund's available fund balance or a different assignment.

3. General Fund Strengths and Challenges

The General Fund is the primary operating fund with most of the discretionary revenue coming from property tax, sales tax, and transient occupancy tax (TOT).

Strengths:

The General Fund has remained strong through financial downturns and natural disasters, in part due to the prudent fiscal policies of the County. The Government Finance Officers Association (GFOA) has a "Best Practice" of maintaining at least two months of operating revenues or expenditures in fund balance. The Board shall maintain a General Reserve balance equivalent to 15% of combined operational appropriations for the General Fund and the Health and Human Services Fund.

Challenges:

The State has historically used counties as a significant part of budget "solutions" when resources are insufficient to fund state programs, even during times of growth. The Federal budget continues to be volatile.

The County will likely continue to face future fiscal challenges including:

- Continued and enhanced demand for services and a growing backlog of unmet needs in some areas, particularly fire prevention and capital needs;
- The impact of certain State programs such as CARE Court without sufficient dedicated revenue to fully cover the cost of those programs;
- Increased costs of core county services due to personnel costs; and
- Limited growth in discretionary, semi-discretionary and certain other revenues and the possibility of reduced state revenues for services the County provides on behalf of the state.

4. Philosophy, Guiding Principles and Key Policies

As the only general-purpose local government covering a geographic area that includes cities and special districts – and with responsibility for both countywide and municipal services and for administering various programs on behalf of the state – counties are under pressure to be the funder or service provider of last resort when it comes to local interest and needs. Meanwhile, counties' ability to raise revenue is limited and more constrained by state mandates and requirements than many other local governments. Given this, a key premise of this Annual Budget Policy Guidelines is that:

The County cannot be all things to all people, nor can it be the "government of last resort." We recognize the County's role as a provider of services in keeping with the traditional county model. Although the County is a significant thread in a tapestry of federal, state and local government services, the County must rely on other government organizations, not-for-profit agencies, faith-based organizations, and family institutions to provide the spectrum of services our community requires.

Consequently, a major focus of this Plan is setting priorities for use of limited discretionary resources.

The following outlines the Guiding Principles and key Multi-Year Fiscal Policies that will guide the County in its efforts to ensure fiscal stability.. As this is a long-term plan, these principles and policies are intentionally broad to maintain flexibility when there are economic or policy changes.

Guiding Principles

1. The County will maintain sufficient General Fund reserves and fund balance to provide adequate cash flow and avoid the need for short-term borrowing and to provide a hedge against an unanticipated fiscal crisis.

2. The County's emphasis will be on using General Fund discretionary resources to finance "core" County programs. These include traditional County programs or services that state law has made the responsibility of counties and that have historically been funded by local taxpayers.

3. In those cases where a significant need exists and Napa County has determined that the County will not assume responsibility for funding or service delivery, the County may opt to provide advocacy, coordination, technical assistance, and/or start-up financial assistance to aid others in the provision of those necessary services.

4. Except when necessary to respond to emergent or urgent situations, the County will not use one-time or limited duration revenue to fund ongoing operating costs. Instead, one-time or limited duration revenue will be used to meet non-recurring needs, like capital projects or paying down unfunded liabilities.

5. The County's goal is that, on average, **actual** annual General Fund operating expenditures will not exceed operating revenue.

6. In periods of fiscal distress it is appropriate to temporarily use fund balance and/or reserves to help balance the General Fund budget, but only if that use is part of a plan to achieve long-term structural balance, with the goal of achieving structural balance within 24 months.

7. Generally speaking, it is better to do a few things well than many things poorly. The County's goal is to provide high priority services in a professional, effective, and efficient manner, even if it means limiting the number or type of lower priority services provided.

8. The County administers a number of costly state programs that are primarily funded by state and federal dollars. Recognizing the limitations on the County's ability to increase discretionary revenues, in the event of a reduction in resources for these programs, the County's goal, to the extent legally possible, is to not backfill reductions in state and federal dollars with discretionary dollars.

9. To maintain as much flexibility as possible to address priority needs and deal with exigent circumstances, wherever legally possible, revenues are to be treated as discretionary resources, rather than dedicated to a particular program.

10. When charging for services or claiming federal or state revenues, the County's goal is to recover the full cost of services provided, including departmental and county overhead.

11. Generally, it is appropriate to use discretionary resources to fund programs or services that provide a broad public benefit. To the extent legally possible, programs or services that primarily benefit a smaller sub-group should be paid for with user fees or assessments.

12. The County provides countywide services to people who live in all areas of the County and municipal services to residents of the unincorporated area. Because city residents already pay taxes or fees to their cities for municipal services, it is important to ensure that city residents do not subsidize the cost of providing services to residents of the unincorporated area.

13. The County has a fiduciary responsibility to the taxpayers to ensure that public funds are spent only to achieve an appropriate public purpose and that any expenditure of public funds incorporates appropriate control and accountability measures to ensure that the public purpose is being achieved.

14. One-time resources will be spent on one-time expenditures. Revenues which have been received for multiple consecutive years may be treated as on-going revenue.

Key Multi-Year Fiscal Policies

1. General Reserve Policy: Maintain a General Reserve balance equal to 15% of General Fund and Health and Human Services Fund appropriations (not including the General Fund Appropriation for Contingencies and Disaster Response and Recovery, any transfer to the Accumulated Capital Outlay Fund, the General Fund contribution to the Health and Human Services Fund and the General Fund Contribution to Roads and the Fire Fund). The General Reserve is to be maintained at this level, except in the case of a dire emergency or declared natural disaster.

2. Once the General Reserve requirement is met, and after evaluating all existing and new Assignments, evaluate any remaining General Fund sources to reduce long-term liabilities, as identified in the annual budget policies. Additional Board Priorities may be considered for funding with CEO Recommendation and a 4/5th vote.

3. After evaluating long-term liabilities, consider transferring unappropriated General Fund discretionary resources to the Capital Improvement-Accumulated Capital Outlay (ACO) Fund to be retained to address unmet capital needs. In addition to funding the ACO Fund, select Board Priorities may be considered for funding with CEO Recommendation and a 4/5th vote.

5. Resource Allocation Strategy

The Resource Allocation Strategy should prioritize those services that are to be funded primarily by the General Fund (and discretionary resources) over those services that are to be funded primarily by special revenue funds or other funding mechanisms. Priority shall be given to fully funding existing programs and existing infrastructure.

Outside funding sources:

New or Enhanced Discretionary Programs: Departments shall not propose new or enhanced programs unless those programs are fully funded (including overhead costs) or if the program is required to fulfill a legal mandate. Departments shall not propose new or enhanced programs using one time revenue that may create an ongoing net county cost. Requests must support the Board priorities will be evaluated by the County Executive Office to determine if the increase is financially viable and sustainable.

Funding can be accomplished by 1) a grant or other dedicated revenue source in FY 2024-25 and future years, 2) being included in the planning and implementation of a major capital project, or 3) reallocating resources from a lower priority program to a higher priority program in accordance with the following criteria:

- The investment targets: (a) accountability and regulatory compliance issues; or (b) critical public health and safety needs;
- The request is justified in terms of workload, service demand (include an analysis of the service level impact), and the efficient use of other resources in the relevant department;
- The investment is needed to address a significant County liability; or
- The need shall be sufficiently critical to justify the request.

State and Federal Funding Impacts:
For programs where State or Federal funding has been reduced or eliminated, the County shall not backfill this loss from General Fund sources unless mandated, or the Board of Supervisors has determined the program is a local priority as determined by a 4/5th vote.
If Napa County receives additional State and Federal funding, in support of Napa County's response to emergencies, the funding shall be allocated to the following categories, in no particular order:

- replenish strategic reserves to policy levels
- emergency response, recovery, and planning
- maintain service levels
- reinstate any payments addressing long-term liabilities that were diverted due to emergencies

New Grants: As required by Board Policy Part I, Section 8A, Grants and Revenue Agreements Policy, grant requests shall be sent to the County Executive Office using the

questionnaire attached to the Policy. Budget requests based on new grant funding shall not be included in the Recommended Budget unless the County has received official notification of Grant Award.

In addition to Board Policy Part I, Section 8A, departments must document how funding will be provided for the duration of the program. To the extent legally possible, all grant applications shall be based on full costing, including overhead and indirect costs. Where matching funds are required for grant purposes, departments shall provide as much "in-kind" contribution as allowed, instead of hard-dollar matches. Unless long-term funding is secure, departments should avoid adding staff to support new grant-supported programs. If it is necessary to add staff, limited term positions shall be used.

6. Personnel and Capital Investments

Personnel Policies:

Position Changes: New Positions will not be considered in the FY2024-25 budget unless the positions are funded by secure, on-going, non-General Fund sources. Exceptions may be recommended to the Board of Supervisors by the County Executive Officer based on County's priorities, needs or mandates. As program needs change, Departments can review their current vacant positions to request position changes through the Add/Delete process.

Conversion of Limited Term positions: All Limited Term (LT) positions that are set to expire during the budget year shall be evaluated for deletion, extension of LT, or conversion to permanent positions. Stability of funding source and on-going service level needs shall be considered in this evaluation.

Vacancy Factor: A vacancy factor calculated using historic vacancy rates is required to be calculated for departments with twenty full-time equivalent positions or greater.

Capital Investments:

Capital Reserves: Once General Reserves are funded, and consideration is given to reducing long-term liabilities shown below, consider transferring one-time discretionary resources to the Accumulated Capital Outlay (ACO) Fund to be retained to assist in addressing future capital needs. Transfer monies from the ACO Fund as needed to cover the cost of Major Capital Improvement projects as approved by the Board of Supervisors.

Capital Assets (Including Vehicles): Requests for capital assets may be considered if they can be funded in a manner that does not create an increased Net County Cost; if the Board has previously approved the project or expenditure; if the capital asset is a replacement being made in accordance with an approved replacement schedule; or if there is a health and/or safety need. Requests for new vehicles are strongly discouraged and should be discussed with Fleet Management prior to submission to the CEO's office.

7. Long-term liability reduction policies

Other Post-Employment Benefits (OPEB): Continue to fully fund the County's OPEB liability on a 20-year amortization schedule by transferring funds to an irrevocable trust. Allocate OPEB costs to the relevant County departments based on a State-approved allocation formula.

115 Trust for Pension and OPEB Benefits: Consider available General Fund resources to fund the 115 Trust for Pension and OPEB. The Internal Revenue Code (IRC) 115 Trust, which is administered by the Public Agency Retirement Services (PARS), can only be used to fund future OPEB and pension obligations. The funding goal is a General Fund contribution equivalent to cost sharing contributions made by employees.

Pre-Payment of PERS Costs: Pre-pay the County's annual Public Employee Retirement System (PERS) Miscellaneous employees and safety employees' pension costs, thereby avoiding the costs of interest accrued through the year, as appropriate and to the extent possible.

Other Policies:

Community Investment Fund: In accordance with the Board's Community Investment Fund policies, fiscal conditions permitting, transfer General Fund resources to the Community Investment Fund in an amount equal to 12.5% of the prior calendar year's actual General Fund Transient Occupancy Tax (TOT) revenue. In accordance with the Board's Community Investment Fund policies, the primary focus of Community Investment Fund expenditures will be on programs or services of regional significance related to parks and open space, and arts and culture.

8. Fiscal Contingency Strategy

To the extent that the annual 5-Year Forecast shows that there is a deficit during the five-year projection period, expenditure reductions or other actions may be taken, if needed, to address a significant reduction in resources, as set forth in this Strategy.

The potential components of any fiscal contingency strategy are essentially the same for all local governments: incremental expenditure cuts; major program cuts; identifying and implementing new revenue sources; distinguishing between high priority and lower priority programs; across-the-board funding cuts; etc. The differences come in how these components are structured in any particular jurisdiction (i.e., what happens first, what programs, if any, are exempt from reductions, etc.).

The County's approach to structuring the components of a Fiscal Contingency Strategy is set forth below.

General Philosophy

To the extent possible, across-the-board reductions in expenditures will be avoided. Reductions will be made on a case-by-case basis, focusing particularly (though not exclusively) on discrete programs or services. Maintaining a highly professional service delivery system is of foremost importance to the County. Thus, if it becomes necessary to make significant service level reductions, the goal will be to reduce the quantity of a service provided rather than the quality of service.

Also, it does not necessarily make sense to fund current operations at the expense of long-term capital or planning programs. Consequently, every effort will be made to continue capital and planning programs geared to meeting the County's long-term needs.

Resource Reduction Priorities

Short-term Actions

The following actions will be considered when dealing with the immediate impact of a significant reduction in resources. The purpose of these actions is to achieve immediate savings and/or better position the organization to deal with the impact of longer-term actions once they are implemented. The actions are listed in priority order:

1. Major General Fund-supported office space remodels will be halted, unless they are required to address critical health or safety needs.

2. Purchase of equipment and capital assets will be selectively deferred. Funding source and impact on service delivery will be considered in implementing the deferral.

3. Implementation of new programs not fully operational and/or not fully revenue offset, will be halted.

4. Approval of contracts for services, not fully revenue offset, will be selectively deferred. Funding sources and impact on service delivery will be considered in implementing the deferral.

5. A selective hiring freeze will be implemented.

Longer-Term Actions

The following actions will be considered when dealing with the longer-term impact of a significant reduction in resources. The actions are listed in priority order and lower priority actions will be implemented only if higher priority actions are insufficient to deal with the fiscal shortfall. Once the County's fiscal situation improves, staff will seek direction from the Board on whether to restore funding or otherwise return to the pre-reduction levels.

1. A moratorium will be placed on implementing new programs or expanding existing programs if the cost of those programs or expansions is not fully revenue offset and a secure, long-term funding source is not identified.

2. To the extent legally possible, or where it does not impact the public's health and safety, place a hard freeze on backfilling reductions in federal or state funding, or in using General Fund money to cover cost of doing business increases for programs primarily funded by state or federal resources.

3. Moderate reductions in discretionary support will be made on a case-by-case basis. These reductions will focus first on programs appropriately funded by dedicated resources (such as fee-supported programs where fees are not yet at full cost recovery or state or federal programs where the County provides an over-match). Reductions made at this point will generally have only a limited impact on service levels and may, in some cases, be offset by increases in fees.

4. Discretionary funding for programs appropriately funded by dedicated resources will be significantly reduced or eliminated. This may involve reducing the County match to the minimal mandated level. In the case of programs that are primarily the state's responsibility, the County will consider returning responsibility to the state for operating those programs, to the extent permitted by law. In the case of fee-supported programs where the fee structure does not fully cover program costs, fees will be increased to fully cover those costs.

5. Limit the annual transfer of General Fund revenue to the Community Investment Fund (which is funded by a portion of TOT) as called for in current Board policy to those amounts encumbered by a multi-year contract. Do not enter into any new contracts or renew any contracts for use of Community Investment Fund money.

6. Discretionary resources that have been earmarked by the Board for certain purposes will be reviewed and proposed for re-allocation to fund core County programs.

7. Major program reductions will be proposed in programs appropriately funded with discretionary resources, starting with the lowest priority service areas and moving on to higher priority service areas as needed. Reductions will be made in the following priority order, focusing on maintaining adequate service levels in core programs:

- Community Resources/Infrastructure
- General Government – Civic Services (excluding services related to property tax assessment, collection, and apportionment)
- Law, Justice, and Public Safety
- Health and Human Services

8. Place a moratorium on all General Fund supported facilities capital improvement projects, other than those needed to address critical health and safety needs. Transfer any unobligated funds in the Accumulated Capital Outlay Fund to the General Fund.

9. A reduced work week or period of unpaid leave may be proposed to achieve salary savings.

9. Revenue Enhancement Strategy

This Revenue Enhancement Strategy describes whether, and how, the County will seek additional revenue to fund needed services.

NEW REVENUE

During the period covered by this Plan, the County will not seek increases in major discretionary revenue sources or new discretionary revenue sources, such as a local option sales tax or an increase in the TOT, unless this is associated with a new program. The County may seek additional funding through:

- Pursuit of grants, though grants will only be pursued for operational funding if the funding is for programs or services the County would otherwise have provided and the grant provides on-going funding or will be used to supplant General Fund resources.
- Increases in fees for fee-supported programs, where the current fees do not fully cover the cost of the program or to keep pace with increases in the cost of doing business.

Napa County

Board Agenda Letter

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Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-81

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Steven Lederer, Director of Public Works

SUBJECT: Sale of Calistoga Fairgrounds Property

RECOMMENDATION

Adopt a Resolution and approve and authorize Agreement No. 240259B taking necessary steps to sell approximately 70.6-acres of County-owned land commonly known as the Calistoga Fairgrounds property to the City of Calistoga for $2,000,000 with a retained right for County to repurchase the Property under the following circumstances: change in zoning and/or proposed sale or lease. (Fiscal Impact: $2,000,000 Revenue; General Fund; Not Budgeted; Discretionary)

[4/5 vote required]

CONTINUED FROM JANUARY 9, 2024

BACKGROUND

In Spring 2023, the Board appointed an Ad hoc Committee to meet with City of Calistoga representatives to negotiate terms for the sale of the County's Calistoga Fairgrounds property. The proposed Resolution and Purchase and Sale Agreement ("PSA") are attached. Certain actions contained within the proposed Resolution are required to affect the sale.

Requested Action:

Adopt a Resolution taking the following actions related to the sale of approximately 70.6-acres of County-owned land commonly known as the Calistoga Fairgrounds property ("Property") located in the City of

Calistoga ("City"):

1. Declare approximately 70.6-acres of County-owned property as "exempt surplus land" pursuant to Government Code section 54221(f)(1)(D) as the County is transferring Property to another local, state, or federal agency for the agency's use;

2. Authorize the Board Chair to execute Agreement 240245B, a purchase and sale agreement and grant deed for conveyance of the Property to the City for a significantly discounted purchase price of $2,000,000;

3. Authorize the County Executive Officer (CEO) or designee to take any other steps and execute any other documents necessary to consummate the sale and conveyance of the Property to the City of Calistoga; and

4. Find that the sale of Property is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to: (a) Class 12 "Surplus Government Property Sales" and (b) the General Rule Exemption.

Procedural Requirements:

1. Receive Staff Presentation

2. Take Public Comment

3. Discuss, Move and Approve Resolution (4/5 vote required).

Napa County is the owner of approximately 70.6-acres of improved land located in the City of Calistoga, County of Napa, commonly known as APN: 011-140-055, 011-140-006, 011-140-007 and 011-481-022 ("County's 70.6-acres" or "the Property"). The County contracted with the Napa County Fair Association for over 80 years to operate and maintain a portion of the County's 70.6-acres as the "Napa County Fairgrounds."

The Napa County Fairgrounds struggled since 2012 when the State cut funding for fair operations, compounded by aging infrastructure and declining attendance at fair events. The Napa County Fair Association terminated its agreement effective December 31, 2018.

In 2019, the County and City of Calistoga ("City") discussed governance of the Property and in particular the approximate 34.3-acre improved portion of the Property which included the major operational facilities including the speedway, fair buildings/offices, a single-family residence, and recreational vehicle parking area. Such discussions concluded with the City's desire to acquire this 34.3-acre portion of the Property ("34.3-acre Portion") to preserve and utilize the grounds for the greatest benefit to Calistoga and County residents. On or about August 20, 2019, the County Board of Supervisors adopted Resolution No. 2019-105 declaring the 34.3-acre Portion as no longer required for County use and designating it as surplus so that it could be conveyed to the City. After adoption of Resolution No. 2019-105, the County and the City executed Agreement 200089B, a purchase and sale agreement and escrow instructions. In May 2020, in recognition of financing limitations the City was experiencing as a result of the COVID-19 pandemic, the County and City terminated the purchase and sale agreement.

In early 2021, the City and County resumed discussions and the City expressed interest in acquiring County's 70.6-acre Property. On or about October 18, 2022, the County Board of Supervisors adopted Resolution No. 2022-152 declaring the remaining 36.3-acre portion of the Property as no longer required for County use and designating it as surplus so the County's 70.6-acre Property could be conveyed to the City. On or about this same date, the County and the City executed Napa County Agreement 230198B, a purchase and sale agreement and escrow instructions. In March 2022, the City terminated the purchase and sale agreement following a failed vote of a measure that would have financed the purchase of and improvements to the Property.

On May 16, 2023, the Board of Supervisors received a presentation from staff regarding the Property and the Board provided direction to staff to resume discussions with the City regarding the City's interest in acquiring the County's 70.6-acre Property. In Spring 2023, the Board appointed an Ad hoc Committee to meet with City of Calistoga representatives to negotiate terms for the sale of Calistoga Fairgrounds. As a result of discussions and negotiations, the terms and conditions set forth in the Purchase and Sale Agreement ("PSA") include:

1. Significantly discounted purchase-sale price of $2,000,000 to allow the City to acquire the Property 'as is' and operate the Property consistent with its historical uses, which are important to the community and the residents of Napa County;

2. Exclude a small portion of County "retained land" which is an approximate 1.0-acre of land and improvements currently being leased by the County to the Napa County Office of Education and certain adjacent square footage;

3. The City shall have a 120-day due diligence period to further investigate the site and must waive all contingencies or cancel the escrow (the PSA provides the CEO with the authority to extend the due diligence period or the closing date if needed); and

4. After waiving contingencies, the City will have 15 days to close escrow on the Property.

The PSA also includes terms related to future uses, including:

1. The City shall operate the Property for public purposes consistent with historical uses, including County fair, events center, RV park, golf course, racetrack, recycled water distribution, food bank for the benefit of the community, etc. (as defined in the PSA);

2. The County may use all or portions of the Property for emergency response purposes at no cost to the County upon the declaration of any federal, state, or local disaster; and

3. The County retains the right to repurchase the Property at the Purchase Price (adjustment defined in the PSA) from the City under the following circumstances: change in zoning and/or proposed sale or long-term lease.

Adoption of the resolution proposed today will declare the Property "exempt surplus property" pursuant to Government Code section 54221(f)(1)(D) which includes "surplus land that a local agency is transferring to

another local, state, or federal agency for the Agency's use," and therefore determine that certain procedural requirements within the Surplus Lands Act do not apply to sale of the Property. The proposed resolution further determines that sale of the Property is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Class 12 "Surplus Government Property Sales" and the General Rule Exemption. The County has given public notice of its intended action to convey the Property to the City at least one week in advance pursuant to California Government Code Sections 25365(c) and 6061.

Once the proposed resolution is adopted, it will be submitted to California Department of Housing and Community Development (HCD) for their review and concurrence with the County's determination that the property is "exempt surplus property." HCD has thirty days to respond, and sale of the property is conditioned upon concurrence from HCD. With procedural requirements and timelines within the PSA, the Property is expected to close escrow in May 2024.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	General Fund will receive the revenue proceeds (Fund 1000, Division 10500)
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The Property is no longer required for County use. Sale of the Property to the City of Calistoga will enable the Property to continue to provide community services under City ownership and operation.
Is the general fund affected?	Yes
Future fiscal impact:	Annual maintenance savings of approximately $300,000.
Consequences if not approved:	The County will continue to maintain and insure the Property.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Categorical Exemption from the California Environmental Quality Act ("CEQA") pursuant to: (a) Class 12 "Surplus Government Property Sales," which may be found in the guidelines for the implementation of CEQA at 14 CCR §15312; and (b) the General Rule Exemption. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines for the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

RESOLUTION NO. 2024-_____

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, DECLARING THE CALISTOGA FAIRGROUNDS PROPERTY TO BE EXEMPT SURPLUS LAND AND AUTHORIZING THE CHAIR TO EXECUTE A PURCHASE AND SALE AGREEMENT WITH THE CITY OF CALISTOGA

WHEREAS, the County is the owner of approximately ±70.6 acres of improved land located in the City of Calistoga, County of Napa, commonly known as APN: 011-140-055, 011-140-006, 011-140-007 and 011-481-022 and more fully described on Exhibit A ("County's Property"); and

WHEREAS, the County contracted with the Napa County Fair Association for over 80 years to operate and maintain on a portion of County's Property the "Napa County Fairgrounds"; and

WHEREAS, the Napa County Fairgrounds struggled since 2012 when the state cut funding which was compounded by aging infrastructure and a decline in attendance in fairs; and

WHEREAS, in 2018 the Napa County Fair Association, notified the County of its intent to terminate its contract with the County for the Napa County Fairgrounds; and

WHEREAS, since 2019 the County and City of Calistoga (the "City") have been discussing the governance of County's Property and the City is now interested in acquiring the County Property, less the one acre portion which includes the Napa County Office of Education ground lease, to preserve and utilize the grounds thereof for its historical uses for the benefit of city and County residents; and

WHEREAS, in consideration of the City's desire to restrict the use of the Property to historical uses, the County is willing to transfer the Property at a significant discount subject to retaining certain reversionary rights to the Property should the City in the future want to sell or lease the Property, or change the zoning; and

WHEREAS, California Government Code Section 25365 (a) provides that a board of supervisors may, by a four-fifths vote, convey or otherwise transfer to a city any real property belonging to a county upon the terms and conditions as are agreed upon and without complying with any other provisions regarding surplusing of public property, if the property is not required for county use; and

WHEREAS, the County has given notice of its intended action to convey the County Property to the City at least one week in advance pursuant to California Government Code Sections 25365 (c) and 6061; and

WHEREAS, the Surplus Land Act, Government Code sections 54220 et seq., is intended to make a local agency's land that is no longer needed for the local agency's use, available for affordable housing, park and recreation, or open-space purposes by requiring local agencies to send written notices of availability to various parties and agencies unless the surplus land is "exempt surplus land;" and

WHEREAS, exempt surplus land includes "surplus land that a local agency is transferring to another local, state, or federal agency for the agency's use," pursuant to Government Code section 54221(f)(1)(D); and

WHEREAS, the governing body of a local agency must declare land to be either surplus land or exempt surplus land at a regular public meeting before taking action to dispose of the property, pursuant to Government Code section 54221(b)(1);

NOW, THEREFORE, BE IT RESOLVED by the Napa County Board of Supervisors as follows:

1. The Board hereby finds that the foregoing recitals are true and correct and are incorporated herein, and the recitals support the declaration of exempt surplus land set forth in this resolution.

2. The Board intends to sell the County Property to City for municipal purposes, including "agency's use" as defined in Government Code section 54221(c)(1), subject to the County retaining a reversionary interest, to be recorded as a first right of refusal, should the City desire to change the zoning or sell or lease the County Property in the future. The purchase and sale agreement includes an acknowledgment and agreement between the County and the City that in the event the County exercises its first right of refusal to take back the County Property, or any portion thereof, that such future transfer shall be treated as exempt surplus land under the Surplus Land Act.

3. The Property is hereby declared to be "exempt surplus land" pursuant to Government Code section 54221(f)(1)(D) based on the facts and reasons set forth in this resolution, and therefore the Surplus Land Act does not apply to the sale of the Property.

4. The Chair of the Board is authorized to execute the purchase and sale agreement for the sale and conveyance of the County Property to the City and related documents, substantially in the form of agreement as attached to the concurrent agenda item.

5. The County Executive Officer (CEO) or designee is authorized to take any other steps and execute any other documents necessary to consummate the sale and conveyance of the County Property to the City.

6. The Board finds that this action is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to: (a) Class 12 "Surplus Government Property Sales," which may be found in the guidelines for the implementation of CEQA at 14 CCR §15312; and (b) the General Rule Exemption. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines for the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

7. This resolution shall take effect immediately upon its adoption.

The foregoing resolution was duly adopted at a regular meeting of said Board of Supervisors of Napa County, State of California, held on the 23rd day of January, 2024, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

_____
JOELLE GALLAGHER, Chair of the Board Supervisors

APPROVED AS TO FORM Office of County Counsel By: ___Sheryl L. Bratton_____ County Counsel Date: _January 17, 2024___	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____

NAPA COUNTY AGREEMENT NO. _____

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("**Agreement**") is dated for reference purposes only, as of _____, 2024, by and between NAPA COUNTY, a political subdivision of the State of California (hereinafter referred to as "**Seller**"), and CITY OF CALISTOGA, a general law city (hereinafter referred to as "**Buyer**"). Seller and Buyer shall be referred to from time to time hereinafter individually as "**Party**" or together as "**Parties**."

RECITALS

A. Seller is the owner of approximately +/- 70.6-acres of real property as well as the buildings and other improvements located thereon in the City of Calistoga, County of Napa, commonly known as APN: 011-140-055, 011-140-006, 011-140-007 and 011-481-022 and more fully shown and described on **Exhibit A** to this Agreement (collectively, the **"Fairgrounds**").

B. Seller wishes to sell to Buyer (i) the land, building, and other improvements consisting of the entirety of the Fairgrounds (except for and excluding approximately 1.24 acres of the parcel designated as a portion of APN 011-014-055 (the "**Retained Land**"), which Retained Land includes the +/- .57 acres of land and improvements currently being leased to the Napa County Office of Education ["**NCOE**"] (with a street address of 1407 N. Oak Street, Calistoga, CA 94515) (the "**NCOE Leased Premises**"), certain land located to the west of the NCOE Leased Premises and improved with a building used for maintenance and storage purposes and related improvements (the "**Adjacent Storage Property**"), as well as the portion of the Fairgrounds currently encumbered by that Access and Utility Easement Agreement, Napa County Agreement 8575, entered into by and between Seller, as grantor, and NCOE, as grantee, with an effective date of January 1, 2019, and recorded in the Official Records of Napa County on December 7, 2018 as Document No. 2018-0023386) (the "**Access Easement Area**")) and (ii) any and all easement rights and appurtenances thereto (the "**Property**"). The approximate location of the Retained Land is depicted on **Exhibit A-1** hereto. The exact boundaries and acreage of the Retained Land will be determined as set forth below.

C. Previously, Seller contracted with the Napa County Fair Association for over eighty (80) years to operate and maintain that portion of the Property commonly known as the "Napa County Fairgrounds"; which contract was terminated before the Effective Date of this Agreement. Since such termination, Seller and Buyer have discussed governance of the Property as well as Buyer's desire to acquire the Property to preserve and utilize it for the greatest benefit of the residents of the City of Calistoga and the County of Napa. Seller and Buyer also entered into an agreement to sell the Property to Buyer, which contract terminated by its own terms before any of the Property was conveyed to Buyer.

D. California Government Code Section 25365 (a) provides that a board of supervisors may, by a four-fifths vote, convey or otherwise transfer to a city any real property belonging to a county upon the terms and conditions as are agreed upon and without complying with any other provisions regarding surplusing of public property, if the property is not required for county use.

E. Seller through its Board of Supervisors desires to declare the Property as no longer required for County use, designate it as surplus, and sell the Property to Buyer, and Buyer wishes to purchase the Property, each on the terms and conditions set forth below. With respect thereto, Buyer agrees and acknowledges that Seller is selling the Property to Buyer at a substantial discount below its fair market value in order to have Buyer own and operate the Property for public purposes consistent with historical uses, as defined herein, of the Fairgrounds for the benefit of the community.

F. Seller has given notice of its intended action to convey the Property to Buyer at least one week in advance of approving this Agreement pursuant to California Government Code Sections 25365 (c) and 6061.

TERMS

NOW, THEREFORE, in consideration of the promises set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell, and Buyer agrees to purchase the Property according to the terms and conditions in this Agreement, as follows:

1. **RECITALS.** The foregoing recitals are true and correct. The Parties agree that this Agreement shall not be deemed invalid because the description of the Property is not exact or is incomplete as of the Effective Date.

2. **PROPERTY TO BE PURCHASED.** An exact legal description of the Property and the Retained Land will be agreed upon by the Parties and insured by the Title Company (as defined below) at Closing as hereinafter described. Within thirty (30) days after the Effective Date, Seller shall provide Buyer with the proposed final legal descriptions of the Property and the Retained Land for Buyer's review and approval, which shall be consistent with the description of the Property and Retained Land as originally set forth in this Agreement. (If such does not occur within said 30-day period, then the Due Diligence Period shall be extended one day for each day past the thirty (30) days when the proposed, applicable final legal description is due on a day for day basis until the proposed final legal descriptions of the Property and Retained Land are delivered to Buyer.) During the Due Diligence Period (as defined below), Seller and Buyer shall attempt in good faith to agree on the final legal description of the Property and the Retained Land. If such occurs, then the Parties shall promptly enter into an amendment to this Agreement that shall include as exhibits thereto the agreed upon legal descriptions for the Property and the Retained Land. If no such agreement is reached but Buyer does not terminate this Agreement before the expiration of the Due Diligence Period as specified in Paragraph 11, then the final legal descriptions of the Property and the Retained Land shall be deemed to be the last respective descriptions of each provided to Buyer by Seller before the Due Diligence Period expired, and Seller and Buyer shall promptly document the same in an amendment to this Agreement.

3. **EFFECTIVE DATE.** This Agreement shall be effective as of the last date of execution by Seller or Buyer, as indicated on the signature page below (the "**Effective Date**").

4. **PURCHASE PRICE.** Buyer agrees to pay to Seller, and Seller agrees to accept, for Buyer's purchase of the Property, the total sum of Two Million Dollars ($2,000,000) all cash to Seller

(the "**Purchase Price**").

5. **ENTIRE AGREEMENT.** THIS AGREEMENT, WHICH INCLUDES EXHIBITS A THROUGH I ATTACHED HERETO, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT OF THIS AGREEMENT AND SUPERSEDES ALL PREVIOUS AGREEMENTS, PROMISES, REPRESENTATIONS, UNDERSTANDINGS AND NEGOTIATIONS, WHETHER WRITTEN OR ORAL, AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. ANY WAIVER, MODIFICATION OR CONSENT WITH RESPECT TO ANY PROVISION OF THIS AGREEMENT MUST, IN ORDER TO BE ENFORCEABLE, BE SET FORTH IN WRITING AND DULY EXECUTED BY BOTH PARTIES AS AN AMENDMENT OF THIS AGREEMENT. PERFORMANCE OF THIS AGREEMENT CONSTITUTES THE ENTIRE CONSIDERATION FOR THE CONVEYANCE OF THE PROPERTY.

6. **BUYER'S OBLIGATIONS.**

a. **DEPOSIT AND TERMS GOVERNING DEPOSIT.**

i. Buyer shall make a deposit of Twenty Thousand Dollars ($20,000.00) ("**Deposit**") within five (5) business days of the Effective Date in the form of a cashier's check or wire transfer to Placer Title Company, whose address is 5 Financial Plaza, #205, Napa, California 94558, acting through Laura Blessing [Phone No.: (707) 346-6948 and Email: lblessingplacertitle.com] and whom the Parties agree will serve as escrow holder for the Property's purchase (the "**Escrow Holder**") as specified more fully in Paragraph 8. The Deposit shall be refundable to Buyer during the Due Diligence Period. If Buyer elects to proceed with the transaction at the expiration of the Due Diligence Period, the Deposit shall then be non-refundable to Buyer except in the event of a Seller default that results in a termination of this Agreement or otherwise provided in Paragraphs 19 [damage due to destruction, damage or loss of the Property], or 20.c.i [failure of any of the conditions to Buyer's obligations to purchase the Property and consummate the Closing]. The Deposit shall be credited towards the Purchase Price at the Closing. All days referenced in this Agreement shall mean calendar days unless otherwise specified.

ii. Buyer and Seller shall open escrow with Escrow Holder. Upon opening of escrow, Buyer shall deliver the Deposit to the Escrow Holder as specified above. Escrow Holder shall place the Deposit in a federally insured bank in an interest-bearing account whose term is appropriate and consistent with the timing requirements of this transaction. The interest therefrom shall be deemed part of the Deposit and accrue to the benefit of Buyer until the earliest of the following events: Close of Escrow (as defined below), refund of the Deposit to Buyer if Buyer timely exercises the right to cancel the escrow as provided for below (or otherwise expressly provided for herein), or payment by the Escrow Holder of the Deposit amount to Seller after the Deposit becomes non-refundable as provided for herein, including, as liquidated damages pursuant to Paragraph 26.b. below, if

Buyer fails to consummate purchase of the Property and proceed to the Close of Escrow as provided for below. Buyer will provide to the Escrow Holder, at the time of the opening of escrow, Buyer's Federal Tax Identification Number. The interest-bearing account for the purpose of holding the Deposit cannot be opened until Buyer's Federal Tax Identification Number is provided. Until then, the Escrow Holder shall hold the Deposit, and no interest shall accrue or be payable to Buyer on the Deposit.

iii. Within five (5) days after Escrow Holder receives the Deposit and places it in the interest-bearing account, Escrow Holder shall release One Hundred Dollars ($100) of the deposited funds (the "**Independent Consideration**") to Seller as and for independent consideration for Seller's execution of this Agreement and the granting of the Due Diligence Period to Buyer as herein provided. Such Independent Consideration is non-refundable to Buyer and shall not be considered part of the Deposit after the Deposit is received by Escrow Holder, but the Independent Consideration shall be credited toward Buyer's payment of the Purchase Price at Close of Escrow, if such Closing occurs.

b. **PAYMENT OF PURCHASE PRICE AND OTHER CHARGES.**

i. Prior to, and as a condition of Close of Escrow, Buyer shall pay into escrow the amount of money necessary to yield net funds payable by the Escrow Holder to Seller at the Close of Escrow in the amount of the Purchase Price, and Buyer shall also pay any and all escrow fees, title insurance premiums, and real property transfer or other taxes necessary for consummation of the purchase and any and all other closing costs, except as otherwise provided in Paragraph 40. If, however, escrow is terminated as a result of Seller's default of this Agreement then Seller shall pay any Title Company and Escrow Holder cancellation fees and costs.

ii. Buyer shall deposit such additional funds necessary to satisfy its obligation to pay the Purchase Price with Escrow Holder, by federal funds wire transfer, or any other method acceptable to Escrow Holder in immediately collectable funds, no later than 2:00 P.M. on the business day prior to the Expected Closing Date (as defined on Paragraph 12); provided, however, that Buyer shall not be required to deposit such monies into escrow if at the time set for the deposit of such monies Seller is in default or has indicated that it will not perform any of its obligations hereunder. Instead, in such circumstances in order to reserve its rights to proceed, Buyer need only provide the Escrow Holder with evidence establishing that the required monies are available.

7. **SELLER'S OBLIGATIONS.** Prior to, and as a condition of the Close of Escrow, Seller shall deposit into escrow a Grant Deed in the form attached hereto as **Exhibit B** (the "**Grant Deed**"), which shall convey from Seller to Buyer fee title to the Property subject only to the Permitted Exceptions (as defined below). In addition, prior to the Expected Closing Date, Seller shall execute and submit to the Escrow Holder (1) an affidavit to the effect that (a) Seller is not a

"foreign person" within the meaning of Internal Revenue Code Section 1445 or successor statutes, and (b) that Seller is not a "nonresident" within the meaning of California Revenue and Tax Code Section 18662 or successor statutes, and (2) an easement agreement between Seller, as grantor, and Buyer, as grantee, whereby Buyer shall have the non-exclusive use of the Adjacent Storage Property and the Access Easement Area for Buyer's use, at no cost, pursuant to an easement agreement in the form attached hereto as **Exhibit I** ("**Adjacent Storage Property and Access Road Easement**").

8. **ESCROW INSTRUCTIONS.** Promptly following the Effective Date, the Parties shall deposit with Escrow Holder a copy of this Agreement. By its execution and delivery of this Agreement, Escrow Holder agrees to be bound by the terms and conditions of this Agreement to the extent applicable to its duties, liabilities, and obligations as "Escrow Holder" hereunder. Escrow Holder shall hold and dispose of the Deposit in accordance with the terms of this Agreement. The Escrow Holder's General Provisions are attached hereto as **Exhibit C** and made a part hereof. This Agreement shall constitute not only the agreement of purchase and sale between Buyer and Seller, but also instructions to Escrow Holder for the consummation of the purchase and sale through the escrow. Escrow Holder shall not prepare any further escrow instructions restating or amending the Agreement unless specifically so instructed by both Parties. Buyer and Seller may execute and deliver such supplemental escrow instructions and closing documents consistent with this Agreement as they may deem necessary or desirable ("**Supplemental Instructions**"). The Supplemental Instructions shall not modify or amend the provisions of this Agreement unless otherwise set forth in a separate written document signed by duly authorized representatives of both Buyer and Seller, including each Party's respective attorneys. In the event that there is any conflict between the provisions of this Agreement and the provisions of any Supplemental Instructions, the provisions of this Agreement shall prevail and control as to the Parties and the Escrow Holder.

9. **DUE DILIGENCE PERIOD; TITLE REVIEW; SELLER'S CONTINGENCY.**

a. Subject to the terms of Paragraph 13, Buyer shall have one hundred twenty (120) days from the Effective Date (the "**Due Diligence Period**"), to review all entitlements for Buyer's intended use and make any and all inspections, investigations, tests, surveys and appraisals of the Property as Buyer deems necessary or desirable including, without limitation, title matters, studies relating to environmental and soil conditions of the Property, and whether the Property is suitable for Buyer's intended use of the Property, and any other matters Buyer determines relate to the Property; provided, however, Buyer shall not undertake any Phase II environmental testing or any destructive or invasive testing on the Property or of any buildings or other structures which is part thereof, without Seller's consent as to the scope of such testing, which consent may be withheld or granted in Seller's sole, but good faith discretion. Additionally, Buyer may review the Land Tenure Agreement (the "**LTA**") between the State of California and Seller and the Recycled Water Use Agreement between the City and Fairgrounds Association for continued applicability as well as all other Seller's Documents provided under Paragraph 10. Buyer may terminate this Agreement and receive a refund of the Deposit by providing written notice of such termination to Seller and Escrow Holder thereof at any time prior to expiration of the Due Diligence Period as specified more fully in Paragraph 11.

b. Within the time periods set forth below, Buyer shall have the right to approve, in its sole and absolute discretion, a preliminary report or title commitment for the Property (the "**Title Commitment**") and all exceptions and other title matters referenced therein or disclosed by an ALTA survey obtained by Buyer (the "**Survey**"). (All such exceptions and title matters are referred to herein as the "**Exceptions**.") Immediately following the Effective Date, Escrow Holder shall at Buyer's expense order the Title Commitment with copies of all Exceptions to title set forth on such report, which Title Commitment and Exceptions Escrow Holder shall deliver to Buyer with a copy to Seller. Buyer at its expense may order a Survey. The Survey (if any), Title Commitment, and copies of all Exceptions to title set forth on the Title Commitment are collectively referred to below as the "**Title Documents**". Buyer shall have until 5:00 p.m. (Pacific Time) ninety (90) days from the Effective Date ("**Title Inspection Period**") to give Seller written notice of Buyer's objections to or disapproval of any Exception(s) disclosed by the Title Documents (the "**Objection(s)**"). The failure of Buyer to so object to an Exception set forth on the Title Commitment or any Survey within the Title Inspection Period shall be deemed Buyer's approval of said Exception. Within ten (10) days after its receipt of the Objections, with respect to each Objection, Seller shall notify Buyer whether Seller (i) will cure or eliminate such Objection from title on or prior to Closing or (ii) is unwilling or unable to cure or have such Objection eliminated from title to the Property on or prior to Closing ("**Seller's Title Notice**"), and Seller shall cure or eliminate from title to the Property prior to Closing any such Objection Seller has agreed to so cure or eliminate. If Seller fails to timely deliver such a Seller's Title Notice as to a particular Objection within such ten (10) day period, then Seller shall be deemed to have made the election in clause (ii) above. If Seller elects not to remove any Objection(s) or is deemed to have made an election not to remove an Objection, then Buyer shall have until the end of the Due Diligence Period to notify Seller that either (1) Buyer is willing to purchase the Property subject to such Objection(s), upon the satisfaction of the remaining conditions to the Closing or (2) Buyer elects to terminate this Agreement. Any such Objection(s) that Buyer has elected to take title to the Property subject to, shall be deemed to be a Permitted Exception. Any failure by Buyer to so terminate this Agreement shall constitute Buyer's election to proceed as specified in subclause (1) above. Any termination of this Agreement pursuant to this Paragraph 9.c or Paragraph 9.d below shall have the same effect as termination pursuant to Paragraph 9.a, Paragraph 9.b and Paragraph 11.

c. Buyer may, at or prior to Closing, notify Seller in writing (the "**Gap Notice**") of any Objection(s) it may have to any Exceptions to title (i) raised by the Title Company between the expiration of the Due Diligence Period and the Closing and (ii) not disclosed in writing by the Title Company or otherwise actually disclosed in writing to Buyer prior to the expiration of the Due Diligence Period (each, an "**Intervening Lien**"). Buyer must notify Seller of such Objection to title within seven (7) days of being made aware of the existence of such Intervening Lien. If Buyer sends a timely Gap Notice to Seller regarding any Intervening Lien, then Buyer and Seller shall have the same rights and obligations with respect to such notice as apply to an Objection under Paragraph 9.c above, except that Buyer shall have until five (5) days after receipt of Seller's Title Notice to an Intervening Lien to make Buyer's election between subclauses (1) and (2) in Paragraph 9.c, above. If

necessary, the Expected Closing Date shall be extended to give Buyer the time specified above to provide a Gap Notice and/or to make the above election, and/or Seller sufficient time to provide Seller's Title Notice in response to a Gap Notice.

d. As used herein, "**Permitted Exceptions**" means any and all Exceptions (i) approved in writing by Buyer or deemed approved pursuant to the terms of this Agreement, (ii) all real estate taxes and assessments for the Property not yet due and payable, (iii) any Exceptions caused by Buyer or any employee, agent, or contractor thereof; and/or (iv) any and all instruments required or stated in this Agreement to be recorded at Closing.

e. This Agreement is contingent on Seller receiving confirmation satisfactory to Seller in its sole but good faith discretion from the California Department of Housing and Community Development ("**HCD**") within thirty (30) days after the Effective Date that the conveyance of the Property and/or right to repurchase the Property pursuant to Paragraph 14 are not subject to the California Surplus Land Act, California Governmental Code Section 54220 et seq. (the "**SLA**"). If Seller does not receive such confirmation within the above-referenced 30-day period, then Seller may terminate this Agreement by providing notice thereof to Buyer within five (5) days after the expiration of the 30-day period. Any such termination shall have the same effect as a termination of this Agreement pursuant to Paragraph 11. Subject to the above, to the extent applicable, Seller shall comply with the SLA with respect to the conveyance of the Property to Buyer.

10. SELLER DOCUMENTS. Prior to the Effective Date, in connection with the previous Purchase and Sale Agreement dated November 3, 2022 between the Parties for the purchase and sale of the Fairgrounds Property and/or this Agreement, Seller has provided Buyer copies of all material documents in Seller's possession or control concerning the Property and listed on **Exhibit F** to this Agreement ("**Seller's Documents**"). Seller's Documents shall also include any other documents provided to Buyer by Seller concerning the Property no later than thirty (30) days before the expiration of the Due Diligence Period. Except as follows in the immediately following sentence, all of Seller's Documents are being, or have been, provided to Buyer by Seller without any representation or warranty as to the completeness or accuracy of any information set forth therein. Seller represents and warrants to its actual knowledge that the copy of the LTA provided to Buyer is a true and complete copy thereof. With respect to events occurring after the Effective Date, but before the Closing, nothing set forth above is intended to alter or modify Seller's common law duty to disclose to Buyer any facts actually known to Seller, which would materially affect the value and desirability of the Property and which facts are to Seller's knowledge not known to, or within the reach of the diligent attention and observation of Buyer.

11. TIME FOR BUYER TO WAIVE CONTINGENCIES TO CLOSE OF ESCROW. As specified above, Buyer shall have until 5:00 p.m. on the last day of the Due Diligence Period in which to cancel escrow and withdraw from the purchase of the Property or to waive the contingencies set forth in Paragraphs 9.b. and 9.c., and in each case proceed to the Close of Escrow on Buyer's purchase of the Property on the terms and conditions specified herein. To exercise the right to cancel the escrow and this Agreement pursuant Paragraphs 9.a, 9.b, and 9.c, Buyer must take steps to ensure actual receipt by the Escrow Holder and by Seller of the Buyer's

written notice of cancellation of this Agreement and escrow resulting therefrom (the "**Cancellation Notice**") prior to 5:00 p.m. on the last day of the Due Diligence Period. To be effective, the Cancellation Notice must be signed by an authorized representative of Buyer.

IF BUYER DOES NOT PROVIDE THE CANCELLATION NOTICE, WHICH IS ACTUALLY RECEIVED BY ESCROW HOLDER AND SELLER NO LATER THAN 5:00 P.M. PACIFIC TIME ON THE LAST DAY OF THE DUE DILIGENCE PERIOD, THEN IT SHALL BE CONCLUSIVELY PRESUMED THAT BUYER HAS WAIVED ALL CONTINGENCIES AND OBJECTIONS TO CLOSE OF ESCROW AS SET FORTH IN PARAGRAPHS 9.a, 9.b. AND 9.c.

Unless the Parties otherwise agree in writing, and except as provided in Paragraph 9.d, Paragraph 20, below [Termination of Agreement Due to Destruction, Damage or Loss of the Property], and/or Paragraph 21.c [Closing Conditions], if and only if Buyer provides the written Cancellation Notice to the Escrow Holder and Seller, no later than 5:00 P.M. Pacific Time on the last day of the Due Diligence Period, that Buyer is withdrawing from the purchase and cancelling escrow and this Agreement, then Buyer shall receive a return from the Escrow Holder of the Deposit, less only: (a) the Independent Consideration paid to Seller as consideration for Seller's execution of this Agreement and the granting of the contingency periods to Buyer as provided above, and (b) any and all Title Company and Escrow Holder cancellation fees and costs shall be shared equally between Buyer and Seller. Upon any such termination of this Agreement, neither Buyer nor Seller shall have any further duties or obligations hereunder, except for those obligations that are expressly stated to survive such termination.

12. **DURATION AND CLOSE OF ESCROW.** For purposes of this Agreement and any other escrow instructions, the Close of Escrow shall occur fifteen (15) calendar days following the expiration of the Due Diligence Period, or earlier waiver by Buyer of said contingency (the "**Expected Closing Date**"). Subject to satisfaction of the contingencies and obligations set forth in this Agreement as set forth or summarized in Paragraph 21.c below, Escrow Holder shall close the escrow (the "**Closing**" or "**Close of Escrow**") by recording the Grant Deed executed by Seller and any other documents required to be recorded, including the Memorandum and Emergency Use Easement (as defined below) and by disbursing the funds and documents in accordance with this Agreement and any Supplemental Instructions not in conflict herewith. If all Closing Conditions set forth in Paragraph 21.c below have been met, and the Closing does not occur by the Expected Closing Date and said date is not extended by mutual agreement and instructions of the Parties, a Party not then in default under this Agreement may notify the other Party, and Escrow Holder, in writing that, unless the Closing occurs within five (5) business days following said notice, the escrow for this Agreement shall be deemed terminated without further notice or instructions.

13. **BUYER'S ENTRY UPON THE PROPERTY DURING ESCROW.** Subject to compliance with the insurance requirements set forth below and the limitations set forth in Paragraph 9.b, at any time during the Due Diligence Period, Buyer and its agents and representatives shall have the right, at reasonable times and with reasonable advance written notice, in a way that does not disturb Seller's use or any tenant's or licensee's use of the Property in any material manner, to enter upon the Property for the purpose of making inspections and tests. No destructive or Phase

II testing shall be conducted, however, without Seller's written prior approval as specified in Paragraph 9.b. Following any such entry or work, unless otherwise directed in writing by Seller, Buyer shall return the Property to substantially the same condition it was in prior to such entry or work, including the recompaction or removal of any disrupted soil or material as Seller may reasonably direct. All such inspections and tests and any other work conducted or materials furnished with respect to the Property by or for Buyer shall be paid for by Buyer as and when due and Buyer shall indemnify, defend (with counsel reasonably acceptable to Seller), protect and hold harmless Seller, any and all officers, officials, employees, agents and contractors of Seller, and the Property of and from any and all claims, liens, liabilities, losses, expenses (including reasonable attorneys' fees), damages, including those for injury to person or property, arising out of or relating to any such work or materials or the acts or omissions of Buyer, its agents or employees in connection therewith; provided, however, the foregoing indemnity shall not apply to any conditions existing on the Property prior to the entry onto the Property by Buyer or any of its agents, employees or contractors unless such party exacerbates such existing condition. Buyer and any and all agents, employees and contractors of Buyer who enter upon the Property for purposes of conducting any inspections or tests (collectively "**Buyer and its Agents**") shall have, and continue to have, the following insurance coverage in full force and effect as a condition of any entry or continued entry onto the Property or any portion thereof, and such insurance shall be maintained in full force and effect throughout the term of this Agreement:

a. Workers' Compensation Insurance. To the extent required by law, Buyer and its Agents shall provide Workers' Compensation insurance for the performance of any of Buyer's and its Agents' duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability, and a waiver of subrogation.

b. Liability Insurance. The following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A VII or better or equivalent self-insurance satisfactory to Seller's Risk Manager, or by a combination thereof:

    i. General Liability. Commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than One Million Dollars ($1,000,000) combined single limit per occurrence, issued by a company admitted to do business in the State of California, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of that party under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

    ii. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with that party's activities under this Agreement of not less than One Million Dollars ($1,000,000) combined single limit per occurrence. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

c. Certificates of Coverage, Waiver of Subrogation and Additional Insureds. Insurance coverages referenced in 13.a and 13.b, above, shall be evidenced by one or more certificates of coverage and copies of applicable endorsements or, with the consent of Seller's Risk Manager, demonstrated by other evidence of coverage acceptable to Seller's Risk Manager, which shall be delivered by Buyer to Seller prior to each of Buyer and its Agents' entry onto the Property, or any one of them (and anytime thereafter as may be reasonably requested by Seller).

i. The certificate(s) or other evidence of coverage shall reference this Agreement by its number or title and department; shall be kept current during the term of this Agreement; shall provide that, if such coverage is reasonably obtainable in the geographic area where the Property is located, Seller shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

ii. For the commercial general liability insurance coverage referenced in 13.b.i. and, for the comprehensive automobile liability insurance coverage referenced in 13.b.ii. where the vehicles are covered by a commercial policy rather than a personal policy, Buyer shall also deliver to Seller with the evidence of coverage an endorsement from the insurance provider naming Seller and its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Buyer shall deliver to Seller with the evidence of coverage an endorsement waiving subrogation. All liability policies required by this Agreement shall be occurrence based policies.

iii. The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Buyer not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of Seller shall pertain only to liability for activities of Buyer under this Agreement, and that the insurance provided is primary coverage to Seller with respect to any insurance or self-insurance programs maintained by Seller.

d. Upon request by Seller's Risk Manager, Buyer shall provide or arrange for the insurer to provide within thirty (30) days of the request, copies of the actual insurance policies or relevant portions thereof.

e. Deductibles/Retentions. Any deductibles or self-insured retentions shall be disclosed to Seller's Risk Manager.

f. Inclusion in Subcontracts. Buyer agrees and acknowledges that the above-referenced liability and Workers' Compensation insurance requirements shall apply to all subcontractors and any other entity or person who is involved in providing services under this Agreement involving any entry onto the Property, or any portion thereof, and Buyer shall require compliance of said persons or entities with such insurance requirements set forth in this Paragraph 13.

14. REPURCHASE RIGHT AND RIGHT OF FIRST REFUSAL.

a. Repurchase Right. Buyer agrees that Seller possesses and hereby grants Seller the right and option to repurchase the Property, or applicable portions thereof, from Seller for a period of ninety-nine (99) years or as otherwise provided in Paragraph 14.c, for the Adjusted Price (as defined below) on and subject to the terms and conditions set forth below (the "**Repurchase Option**"):

i. Right to Exercise the Repurchase Option. Seller may exercise its Repurchase Option if the Property, or any portion thereof, is subject to a Proposed Rezoning (as defined below) except as follows: If Buyer (or any other applicable governmental authority or body) finally denies (i.e. the denial is not subject to any right appeal or legal challenge) the Proposed Rezoning before the Repurchase Closing occurs, then the Repurchase Option for the specific Proposed Rezoning whether or not previously exercised by Seller shall become null and void (but not Seller's right to exercise its Repurchase Option for other Proposed Rezonings). Unless Seller agrees in its sole and absolute discretion otherwise in writing, Buyer shall not hold a vote on or otherwise approve of any Proposed Rezoning until the time for Seller to deliver Seller's Election Notice has expired.

ii. Exercise of Repurchase Option.

1. Before any Proposed Rezoning of all or part of the Property occurs, Buyer shall send Seller a written notice in compliance with the notice provisions of this Agreement specifying the Proposed Rezoning and what parts of the Property would be affected thereby (the "**Option Property**"), which notice shall also include the reasons why Buyer wishes to permit or consider the Proposed Rezoning and be accompanied by a reconciled statement (the "**UCI Value Statement**") certified as being accurate by Buyer's chief financial officer or an outside auditor of the monetary value of all unamortized capital improvements (amortized in accordance with IRS guidelines), if any, made by Buyer (through the use of the Buyer's general funds) on the Option Property ("**Unamortized Capital Improvements Value**") along with reasonable supporting documentation (the "**Proposed Change in Use Notice**"). Seller shall have until the later of (x) ninety (90) days after its receipt of the Proposed Change in Use Notice or (y), if Seller has agreed to permit such a vote on or approval to occur pursuant to subparagraph (i) above, thirty (30) days after the

Proposed Rezoning has been finally approved to elect to exercise the Repurchase Option for the Option Property by providing notice of Seller's election to Buyer in accordance with the notice provisions of this Agreement ("**Seller's Election Notice**"). Buyer shall, however, have no obligation to convey the Option Property unless Seller pays the Adjusted Price (as defined below) to Buyer as specified in this Paragraph 14a. No more than once annually, Buyer shall provide Seller with an annual list of capital improvements, if any, made by the Buyer to the Property.

2. Notwithstanding the above, if less than the entirety of the Property is subject to a Proposed Rezoning and such portion of the Property is not a separate legal parcel or parcels in compliance with the California Subdivision Map Act (Government Code Section 66410 et seq. (the "**Map Act**"), then Seller and Buyer shall coordinate to process a lot line adjustment or parcel map creating a separate legal parcel for the portion of the Property subject to the Proposed Rezoning ("**Rezoning Parcel**"). Alternatively, Buyer may determine a parcel map to create the Rezoning Parcel may be waived or that the conveyance of the Rezoning Parcel is exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2). If a Rezoning Parcel is created, whether by map, lot line adjustment, waiver conveyance or exemption, Seller shall be entitled to repurchase the Rezoning Parcel but only for an Adjusted Price calculated on said basis. If (i) the application to create, or waive a map for creation of a Rezoning Parcel is finally denied by Buyer (or other applicable governmental authority or body) (i.e. beyond any applicable appeal or legal challenge period) and (ii) Buyer reasonably determines that the conveyance of the Rezoning Parcel (or what would have been the Rezoning Parcel had the application been approved) would not be exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2) or any successor or other statute or law, then Seller shall be entitled to repurchase the entirety of the legal parcel or parcels on which the land subject to the Proposed Rezoning is located (and which land will be deemed to be the Option Property), but only for an Adjusted Price calculated on said basis.

iii. Escrow and Closing of the Repurchase. If Seller timely exercises the Repurchase Option, then an escrow shall be opened promptly with Escrow Holder (or any national title company selected by Seller if Escrow Holder is no longer in business) for purposes of facilitating the reconveyance of the Option Property to Seller in accordance with the terms of this Paragraph 14a. In such an event, the closing of the repurchase transaction (the "**Repurchase Closing**") shall take place on the ninetieth (90th) day following the delivery of Seller's Election Notice (the "**Repurchase Closing Date**") or such earlier date as Seller may elect subject to the following conditions and obligations being satisfied (but which date shall be subject to the extension to the extent that the Option Property does not initially entirely consist of one or more legal parcels to allow the process specified in

subparagraph (ii) above to be completed). Title to the Option Property shall be conveyed to Seller by a grant deed substantially in the form of **Exhibit B** to this Agreement. Title to the Option Property shall be subject to all matters of record except Buyer shall cause the Option Property to be conveyed free and clear of all Monetary Liens (the "**Excluded Exceptions**"). As a condition of the Repurchase Closing, Seller shall be entitled to receive a CLTA owner's title policy (or other similar owner's title policy) in the amount of the Adjusted Price showing title vested in Seller with no Excluded Exceptions shown thereon. The Repurchase Closing shall take place on the Repurchase Closing Date at the offices of the applicable escrow holder or at such other location as may be agreed to by Buyer and Seller. All closing costs for the Repurchase Closing shall be allocated between Buyer and Seller per county custom as reasonably determined by the escrow holder for the transaction. Buyer and Seller shall sign and, if applicable, acknowledge such other documents and instruments as may be reasonably required to cause the Option Property to be conveyed to Seller pursuant to this Paragraph 14(a).

iv. No Extinguishment or Waiver**.** With respect to any future Proposed Rezoning not covered in a Proposed Change in Use Notice delivered to Seller, Seller's Repurchase Option shall not be deemed waived or extinguished if Seller elects not to exercise the Repurchase Option for the Proposed Rezoning actually specified in the applicable Proposed Change in Use Notice. Seller's repurchase right shall also survive any failure by Buyer to timely provide Seller with a Proposed Change in Use Notice as required under this Paragraph 14a.

v. Declaration of Covenants and Memorandum. At Closing, the Parties shall have duly executed and acknowledged a declaration of covenants and restrictions and memorandum of option and right of first refusal to purchase (the "**Memorandum**") and record the same in the official records of Seller to provide the public with notice of the Repurchase Option and the ROFR referenced below. The Memorandum shall be substantially in the form attached hereto as **Exhibit D**. The Grant Deed for the sale of the Property to Buyer shall also reference that the Property is being conveyed subject to the Repurchase Option and ROFR.

b. Right of First Refusal.

i. Buyer agrees that Seller possesses and hereby grants Seller a right of first refusal for a term of ninety-nine (99) years, or as otherwise provided in Paragraph 14c, to repurchase the Property, or any part thereof, (the "**ROFR**") for the Adjusted Price before, with respect to such Property, or any part thereof, (the "**ROFR Property**") Buyer either (1) sells or conveys fee title to the ROFR Property or (2) enters into a Long Term Lease (as defined below) to any third-party entity for the ROFR Property. No such Long Term Lease or agreement to sell or convey the Property shall be effective until and unless Seller fails to timely provide a Seller's ROFR Exercise Notice as specified below, and in no event shall any such Long Term Lease or agreement to sell or convey the Property be binding on Seller

if Seller's ROFR Exercise Notice is timely delivered and Seller proceeds to repurchase the Property, or the applicable portion thereof, pursuant to said notice.

ii. Prior to offering the ROFR Property for any such sale, conveyance, or Long Term Lease or accepting an unsolicited offer for the same, Buyer shall send Seller a written notice in compliance with the notice provisions of this Agreement including the proposed purchase agreement or lease, or specifying the proposed terms of the sale or lease, as applicable, along with a UCI Value Statement (the "**ROFR Notice**") for the ROFR Property certified, as being accurate by Buyer's chief financial officer or an outside auditor, and with supporting documents as specified in Paragraph 14a. Seller shall have ninety (90) days after its receipt of the ROFR Notice to exercise its ROFR by providing notice thereof to Buyer ("**Seller's ROFR Exercise Notice**"), which notice shall comply with the notice provisions of this Agreement. The ROFR Property shall be limited to the portion of the Property that is the subject of the proposed sale, conveyance or Long Term Lease.

iii. Notwithstanding the above, if less than the entirety of the Property is proposed to be subject to a Long Term Lease and such portion of the Property is not a separate legal parcel or parcels in compliance with the Map Act (as defined above) then Seller and Buyer shall coordinate to process a lot line adjustment or parcel map creating a separate legal parcel or parcels for the land included within the Long Term Lease and the ROFR Property shall consist of said legal parcel or parcels once such process is completed. Alternatively, Buyer may determine a parcel map to create the ROFR Property may be waived or that the conveyance of the ROFR Property is exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2). If the ROFR Property is created, whether by map, lot line adjustment, waiver, conveyance or exemption, Seller shall be entitled to purchase the ROFR Property but only for an Adjusted Price calculated on said basis. If (x) the application to create or waive a map to cause the ROFR Property to consist entirely of one or more legal parcels in compliance with the Map Act (as defined above) is finally denied by Buyer (or any other applicable governmental authority or body) and (y) Buyer reasonably determines that the conveyance of the ROFR Property is not exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2) or any successor or other statute or law, then Buyer shall not proceed with the Long Term Lease.

iv. If the ROFR is timely exercised, subject to the payment of the Adjusted Price, the ROFR Property shall be conveyed to Seller by a grant deed through an escrow, free and clear of Monetary Liens, all as specified in Paragraph 14(a) on the later of the closing date specified in the ROFR Notice or ninety (90) days after the delivery of Seller's ROFR Exercise Notice (but which date shall be subject to the extension to the extent that the ROFR Property does not initially entirely consist of one or more legal parcels to allow the process specified in subparagraph (iii) above to be completed). Closing costs shall be allocated as specified in the ROFR Notice, or if not so specified, as stated in Paragraph 14(a).

v. For the avoidance of doubt, if the ROFR is timely exercised, the purchase price paid for the ROFR Property shall be the Adjusted Price and not any purchase price specified in any applicable purchase or sale agreement or term sheet triggering the ROFR.

c. Term of the Repurchase Option and ROFR. The term of the Repurchase Option and ROFR shall commence as of the Closing of the sale of the Property to Buyer and, unless otherwise agreed by Buyer and Seller in a recorded instrument, shall expire on the earlier of (x) 5:00 p.m. Pacific Time ninety-nine (99) years following said Closing or (y) the maximum period allowed by applicable law. The Repurchase Option and/or ROFR shall automatically expire and be of no effect on the expiration of the term specified in this Paragraph; provided, however, that Seller shall execute such instruments (e.g., a quitclaim deed) as may be reasonably requested by Buyer to confirm the termination of the Repurchase Option and/or ROFR, as applicable, after such occurs.

d. Defined Terms. Defined Terms. The following terms shall have the meanings ascribed to them below for purposes of this Paragraph 14.

i. "**Adjusted Price**" means the Purchase Price paid by Buyer at Closing increased by the change in the Index from the Closing of the sale of the Property to Buyer, plus the Unamortized Capital Improvements Value (as defined in Paragraph 14(a)(ii)), which Adjusted Price shall be prorated on a land to land basis (i.e. the ratio of the square footage of the land within the Option Property or ROFR Property, as the case may be, to the square footage of all of the land within the Property) if the Option Property or ROFR Property, as applicable, consists of less than all of the Property.

ii. "**Index**" means the Consumer Price Index for All Urban Consumers-All Items, published monthly by the United States Department of Labor (base year 1982-84=100), or any successor index thereto as hereinafter provided. If the base year of the Index is changed, then all calculations pursuant to this Paragraph 14 that require the use of the Index shall be made by using the appropriate conversion factor published by the Department of Labor (or successor agency) to correlate to the base year of the Index herein specified. If no such conversion factor is published, then the Parties shall in good faith make the necessary calculation to achieve such conversion. Should the Department of Labor discontinue the publication of the Index, then the Parties will adopt a substitute index or procedure, which reasonably reflects and monitors consumer prices.

iii. "**Historical Use**" means each prior use of the Property specified on **Exhibit D-1** to this Agreement; provided, however, in no event shall a Historical Use include a proposed project involving large scale commercial or residential development for a use or uses listed on **Exhibit D-1** or otherwise.

iv. "**Long Term Lease**" means any lease, license, occupancy, concession, or similar agreement with a term (including options to extend) in excess of twenty-five (25) years.

v. "**Proposed Rezoning**" means any proposed change in the zoning for the Property or any part thereof, to allow a use that is not a Historical Use of the Property and which such new use would not be allowed under the zoning for the Property as set forth in Calistoga Municipal Code Section 17.23.020 (A)(1), (2), (3) or (4) as of the Effective Date as stated in **Exhibit D-2** to this Agreement.

e. Right to Enforce. Buyer stipulates and agrees that Seller may enforce its Repurchase Option and ROFR through specific performance and/or other equitably relief, including through a mandatory or prohibitory injunction, and that the Property, and any part thereof, are of a special and unique character which gives it a peculiar value, and that Seller cannot be reasonably or adequately compensated in damages in an action at law in the event Buyer breaches its obligation to sell the Property, or any part thereof, to Seller pursuant to either Seller's Repurchase Option or ROFR.

f. Buyer Compliance With Surplus Land Act. If Seller seeks to exercise its Repurchase Option and/or ROFR pursuant this Paragraph 14, Buyer shall take all actions necessary to designate the Option Property, or ROFR Property, as applicable, "exempt surplus property" under the SLA (as defined in Paragraph 9(e)) to be transferred back to Seller for its use as a local agency to the full extent that such is legally required to allow such conveyance or transfer to occur. This obligation includes but is not limited to scheduling all public meetings, making all necessary findings, and providing all necessary documentation to the HCD to lawfully transfer the Option Property and/or ROFR Property, as applicable, to Seller under the SLA.

g. Survival. This Paragraph 14 including Seller's Repurchase Option and ROFR shall survive the Closing.

15. **EMERGENCY USE EASEMENT**. Buyer covenants and agrees that after Closing Seller shall have a perpetual right to use all or part of the Property for emergency response purposes at no cost to Seller upon the declaration of any federal, state or local disaster. At Closing, Buyer will grant Seller a perpetual right and easement for Seller and other governmental entities conducting the emergency response in partnership with the Seller to use along with their respective permittees all or part of the Property for emergency response purposes as specified above in the form of **Exhibit D-3** to this Agreement (the "**Emergency Use Easement**"), which shall be recorded against the Property as specified in Paragraph 21(d). To the extent that any governmental entities and/or their respective permittees conducting the emergency response in partnership with the Seller pay any rent or other fees for use of the Property for emergency purposes, all such rent and/or fees shall be paid to the Buyer, not the Seller. The Seller may not assign its rights under the Emergency Use Easement to any other party or entity. The provisions of this Paragraph 15 shall survive the Closing.

16. BUYER'S DELIVERY OF COPIES OF REPORTS AND INVESTIGATION/DUE DILIGENCE AND ANALYSIS MATERIALS REGARDING THE PROPERTY AS A CONDITION TO RETURN OF DEPOSIT FUNDS. If the purchase of the Property is not consummated for any reason other than Seller's default, then at Seller's request, Buyer shall, within five (5) business days after written request from Seller, deliver to Seller, at no charge, copies of all surveys, engineering studies, analysis, soil reports, maps, master plans, feasibility studies and other similar items ("**Reports**") prepared by or for Buyer that pertain to the Property. Notwithstanding the above, Buyer shall not be obligated to provide to Seller any documents which are subject to any attorney-client privilege and/or which are proprietary in nature.

17. SELLER'S AND BUYER'S REPRESENTATIONS AND WARRANTIES; BUYER'S PURCHASE OF PROPERTY IN AS-IS CONDITION WITHOUT RELIANCE ON ANY REPRESENTATIONS OR WARRANTIES FROM SELLER OTHER THAN AS EXPRESSLY STATED HEREIN, AND WITHOUT ANY RIGHT OF CONTRIBUTION OR INDEMNITY FROM SELLER EXCEPT AS EXPRESSLY STATED HEREIN.

a. Buyer agrees and acknowledges that, subject to Seller's representations and warranties as expressly set forth below in this Agreement, it is purchasing the Property and any and all improvements located on the Property at Close of Escrow in "as-is", "where-is" condition with all faults. Except for the following personal property items or equipment belonging to the Napa County Fair Association, Mt. St. Helena Golf Club and Calistoga Garden Club (each of whom has a shed and items located therein), Calistoga School District (a score board), HMC Promotions (container, a ticket booth, traffic delineators, fence poles, and concession stand sign), all structures, improvements, furniture, fixtures, and equipment located on the Property, including all personal property and equipment located within the structures, will remain on the Property at Close of Escrow and be deemed part of the Property. Buyer acknowledges and agrees that the foregoing third-parties, and not other parties, may remove the foregoing personal property from the Property prior to Closing. At no material cost, prior to Closing, Seller will use commercially reasonable efforts to cause such third-parties to remove such items and equipment from the Property and will also provide each such third-parties a notice that if they do not remove their personal property before Closing that such property will be deemed abandoned pursuant to applicable law. After Closing, Buyer acknowledges and agrees that Seller will have no responsibility or liability to Buyer for any such personal property items and/or equipment owned by such third-parties whether or not left on or removed from the Property prior to Closing.

b. Buyer further agrees, acknowledges, and represents that in purchasing the Property, it is not relying at all on any representations or warranties by Seller relating in any manner to the Property, other than Seller's representations and warranties expressly set forth in this Agreement. Seller is not and shall not be required to remove, pay for, contribute to the payment for, or to indemnify or hold Buyer or anyone else harmless against the costs of any removal or cleanup of improvements, fixtures, personal property, Hazardous Materials (as defined below), or dangerous conditions located on or affecting the Property, or otherwise be responsible for the same in any manner. Buyer further acknowledges and agrees that Seller has not made, does not make and specifically

negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, including but not limited to, warranties with respect to the fitness of the Property for a particular purpose or the suitability of the Property for Buyer's intended use thereof, other than Seller's express representations and warranties set forth in this Agreement.

c. Buyer acknowledges that by the end of the Due Diligence Period, Buyer must and will have either waived or caused to be conducted all inspections and investigations of the Property that Buyer believes are necessary to protect its own interests in, and its contemplated use of, the Property. The Parties acknowledge that, except as otherwise stated in this Agreement, no representations, inducements, promises, agreements, assurances, oral or written, concerning the Property, or any aspect of the occupational safety and health laws, Hazardous Materials laws, or any other act, ordinance, or law, have been made by either Party or any agent or representative thereof, or relied upon by either Party hereto. Any environmental reports, soils reports, surveys, and other similar documents which were prepared by third party consultants and provided to Buyer by Seller or Seller's representatives, have been delivered as an accommodation to Buyer and without any representation or warranty as to the sufficiency, accuracy, completeness, and/or validity of said documents, all of which Buyer relies on at its own risk. As used herein, "**Hazardous Materials**" means any pollutants, contaminants, hazardous or toxic substances, materials, or wastes (including petroleum, petroleum by-products, radon, asbestos, and asbestos containing materials, polychlorinated biphenyls ("**PCBs**"), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), as such terms are used in any applicable environmental laws and/or regulations.

d. Additionally, except as otherwise expressly provided for in this Agreement, Seller has not made, does not make and specifically negates and disclaims, any representations, warranties, promises, covenants, agreements, obligations, or guaranties of any kind or character whatsoever whether express or implied, oral or written, past present or future concerning or with respect to: (i) the value of the Property; (ii) the revenues to be derived from the Property; (iii) the manner, quality, state of repair, or lack of repair, of the Property; (iv) the nature quality or condition of the Property including without limitation, the water, soil and geology; (v) the compliance of or by the Property or its operation with any laws of any applicable governmental authority or body; (vi) the manner, condition, or quality of the construction or materials, if any, incorporated into the Property; (vii) compliance with any environmental protection, pollution or land use laws, including but not limited to, the Endangered Species Act, Title III of the Americans With Disabilities Act of 1990, and any other environmental laws or regulations, or other law governing access by disabled persons; (viii) the presence or absence of Hazardous Materials at, on, under, or adjacent to the Property; (ix) the conformity of the Property to past, current or future applicable zoning or building or code requirements; (x) the deficiency of any under shoring; (xi) the adequacy of any drainage; (xii) the fact that all or a portion of the Property may be located on or near an earthquake fault line or located in an Alquist-Priolo special study zone; or (xiii) with respect to any other matter concerning the Property, discussed or disclosed in any Seller's Documents, in any public records of any governmental agency or entity or utility company, or in any other

documents available to Buyer.

e. Except for matters arising from Seller Parties' (as defined below) intentional fraud or misrepresentation or any default by Seller under this Agreement, Buyer, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges Seller and its directors, officers, principals, consultants, representatives, attorneys, agents and employees, successors and assigns (collectively with Seller, the "**Seller Parties**"), from and against any and all claims, actions, causes of action, demands, liabilities, damages, costs and expenses (including attorneys' fees and costs), whether known or unknown at the time of this Agreement, which Buyer has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. For the foregoing purposes, Buyer hereby specifically waives the provisions of Section 1542 of the California Civil Code ("**Section 1542**") and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BUYER'S INITIALS: _____

Buyer hereby specifically acknowledges that Buyer has carefully reviewed this subparagraph and discussed its import with legal counsel and that the provisions of this subparagraph are a material part of this Agreement. The provisions of this Paragraph 17 shall survive Closing. For the avoidance of doubt, the releases provided in this Paragraph 17 do not apply to any breaches or defaults by Seller under this Agreement.

f. Representations and Warranties.

i. By Seller. As a material inducement to Buyer, Seller represents and warrants to Buyer that, as of the Effective Date of this Agreement and as of the Expected Closing Date, with the same force and effect as if remade by Seller in a separate certificate at that time:

1. Seller is a duly organized and validly existing public entity in the State of California and has all requisite power and authority to conduct business in the state where the Property is located.

2. Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the transaction contemplated hereby. The execution and delivery of this Agreement and the instruments referenced herein by Seller and the performance and

observance of the terms, and the consummation of the transaction contemplated hereby have all been authorized by all necessary actions of Seller

3. This Agreement has been duly executed and delivered by Seller.

4. This Agreement and all documents required herein to be executed by Seller are and shall be valid, legally binding obligations in full force and enforceable against Seller in accordance with their terms.

5. To Seller's actual knowledge without any duty of inquiry or investigation, there are no attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings pending against Seller, which would materially adversely affect the ability of Seller to consummate the transactions contemplated by this Agreement.

6. To Seller's actual knowledge without any duty of inquiry or investigation, there is no existing litigation regarding the Property, including, but not limited to, any pending proceedings in eminent domain which would affect the Property.

7. To Seller's actual knowledge without any duty of investigation or inquiry, (a) there are no agreements affecting the right to possession of the Property except for the leases listed on **Exhibit E** (the "**Existing Leases**") and (b) there are no maintenance, service or other agreements affecting or relating to the Property that will survive Closing. Seller shall provide Buyer with copies of each of the Existing Leases as part of Seller's Documents.

8. Seller (A) is not listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of OFAC and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation or orders are collectively called, the "**Orders**"), and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**"); (B) is not a Person (as defined in the Orders) who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (C) is not owned or controlled by (including, without limitation, by virtue of such Person being a director or owning voting shares or interests), or acts for or on behalf of, any person on the Lists or any other Person who has been

determined by competent authority to be subject to the prohibitions contained in the Orders.

9. Seller has disclosed to Buyer that a certain claim has been made by David Abreu, individually, Abreu Vineyards, Inc. and David Abreu Vineyard Management, Inc. (individually and collectively "**Abreu**"), as set forth in the May 14, 2019 letter from Abreu's attorney and addressed to the Napa County Fair Association, Inc., a copy of which is attached hereto as **Exhibit H**, regarding certain improvements located on the Property (the "**Abreu Claim**"). Specifically, Abreu alleges as part of the Abreu Claim that Abreu is the owner of certain improvements located on the portion of the Property improved with a racetrack (the "**Racetrack**") and that he is entitled to remove the same from the Property (the "**Disputed Items**"). Seller has received additional correspondence from Abreu after the May 14, 2019 letter concerning the Disputed Items. Seller has provided Buyer copies of all written communications regarding the Abreu Claim in Seller's possession as of the Effective Date.

ii. By Buyer. As a material inducement to Seller, Buyer represents and warrants to Seller that, as of the Effective Date of this Agreement and as of the Expected Closing Date, with the same force and effect as if remade by Buyer in a separate certificate at that time:

1. Buyer is a duly formed and validly existing municipal corporation in the State of California, has all requisite power and authority to conduct business in the state where the Property is located.

2. Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein and to consummate the transaction contemplated hereby. The execution and delivery of this Agreement and the instruments referenced herein by Buyer and the performance and observance of the terms, and the consummation of the transaction contemplated hereby have all been authorized by all necessary actions of Buyer.

3. This Agreement has been duly executed and delivered by Buyer.

4. This Agreement and all documents required herein to be executed by Buyer are and shall be valid, legally binding obligations in full force and enforceable against Buyer in accordance with their terms.

5. Buyer (A) is not listed on the Lists; (B) is not a Person (as defined in the Orders) who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (C) is not owned or controlled by (including, without limitation, by virtue of such Person being a director

or owning voting shares or interests), or acts for or on behalf of, any person on the Lists or any other Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders.

All of the representations, warranties and covenants of Seller and Buyer set forth in this Agreement shall survive the Closing and the recordation of the Grant Deed for a period of twelve (12) months after the Closing (the "**Survival Period**"). With respect to any claims and matters covered by the Survival Period, neither Party shall have a right to bring any action or proceeding against the other Party as a result of any untruth or inaccuracy of such representations and warranties, or any such breach, unless (a) the Party claiming the breach serves a written claim on the other Party within such Survival Period describing in reasonable detail the basis of the claim and (b) said Party thereafter commences and serves an action against the other Party within ninety (90) days after said Party gives such notice. Notwithstanding anything to the contrary in this Agreement, (1) Seller shall have no liability, and Buyer shall make no claim against Seller, for (and Buyer shall be deemed to have waived any failure of a condition hereunder by reason of a failure of any condition or a breach of any representation or warranty) if the failure or breach in question constitutes or results from a condition, state of facts or other matter that was actually known to Buyer on or prior to the Closing and Buyer proceeds with the Closing and (2) Buyer shall have no liability, and Seller shall make no claim against Buyer, for (and Seller shall be deemed to have waived any failure of a condition hereunder by reason of a failure of any condition or a breach of any representation or warranty) if the failure or breach in question constitutes or results from a condition, state of facts or other matter that was actually known to Seller on or prior to Closing and Seller proceeds with the Closing.

18. **Seller's Environmental Disclosure**. Seller makes the following disclosure in connection with the contemplated sale of the Property to Buyer. The Property has been owned by Seller since approximately 1939. Prior to that date, Seller is informed that the Property was used as a dairy farm. During Seller's ownership, pesticides were used and stored on the Property. Additionally, at various times, diesel, gasoline (including gasoline containing lead), and liquid petroleum have been stored in the maintenance shop and yard, and/or in connection with the racetrack that was operated for decades on the Property. Antifreeze and potentially asbestos from brake pads were used or found on the Property, and automobile or vehicle maintenance and/or repair activities may have occurred on the Property. Waste oil, propane, diesel, and gasoline have been stored in tanks on the Property. Some of these tanks remain on the Property, although such tanks are not currently in service. In the 1950s, the fairgrounds portion of the Property was used by Civil Defense to store equipment and medical supplies that ultimately crystalized and became explosive. Seller's sheriff's department bomb unit, however, may have destroyed all such supplies. Other portions of the Property were previously used for an RV Park and golf course. Because of the prior uses of the Property, it is potentially possible that petroleum, petroleum related compounds, pesticides, and other Hazardous Materials have been released on or under the Property. Such past uses of the Property may affect the Buyer or subsequent owner's ability or rights to develop the Property. Among other things, oil-stained soil and/or pesticide residue are sometimes found on properties that have been in such use; and Seller does not have the requisite information to determine the exact nature or environmental condition of the Property nor the exact effect, if any, that such past uses may have on the developability or other ability to use all or portions of the Property in the future. Seller makes no representations or warranties with

respect to the present environmental condition of the Property, and/or the existence or lack of existence of Hazardous Materials located on or under the Property.

19. NO RECORDATION. Neither this Agreement nor any memorandum (excluding the Memorandum) thereof shall be recorded.

20. TERMINATION OF AGREEMENT AND CANCELLATION OF ESCROW DUE TO DESTRUCTION, DAMAGE OR LOSS OF THE PROPERTY.

a. If, prior to the Closing, Seller becomes aware that all or any material portion of the Property has been destroyed, lost, or substantially damaged, or has been condemned, subsequent to the Effective Date, Seller shall promptly give Buyer written notice of the event. If the destruction, loss or damage occurs due to any cause other than a cause attributable to the actions or omissions of Buyer or its agents, and would cost more than One Million Dollars ($1,000,000.00) to repair or cure or the condemnation affects a material portion of the Property as reasonably determined by Buyer, then Buyer may, within thirty (30) business days after becoming aware of such destruction, damage, loss or condemnation (but prior to the Expected Closing Date), withdraw from the purchase by giving written notice to the Escrow Holder and Seller of Buyer's termination of this Agreement and cancellation of the escrow. If any such termination notice is timely provided, Buyer shall receive a return of the Deposit (exclusive the Independent Consideration). The existence of any Hazardous Materials on or under the Property that preexisted the Effective Date shall not be grounds for such termination of the Agreement and the cancellation of escrow, and subsequent return of the Deposit, pursuant to this Paragraph 20, but it may be grounds for termination of this Agreement pursuant to Paragraph 9.

b. If Buyer does not provide timely notice of its cancellation of escrow, then Buyer will be deemed to have elected to proceed with the purchase of the Property and with the Closing. In that case, notwithstanding any destruction, loss, damage, or condemnation affecting the Property, this Agreement shall remain in full force and effect and the purchase of the Property shall be consummated with no adjustment, reduction of the Purchase Price or other modification. In the event that Buyer proceeds with the Closing notwithstanding some occurrence of loss, damage, destruction or condemnation, Buyer shall be entitled to any insurance proceeds or condemnation award applicable to such loss, destruction, damage, or condemnation award (other than insurance payments or portion of any award paid to reimburse Seller for its costs or expenses incurred in addressing such loss, destruction, damage, or condemnation). At the Close of Escrow, Seller shall assign and transfer to Buyer the right to any such insurance proceeds or condemnation award.

21. DOCUMENTS REQUIRED AT OR BEFORE CLOSING; CLOSING CONDITIONS AND CLOSING PROCEDURES.

a. Seller's Deliveries. The following documents shall be submitted by Seller to Escrow Holder at or prior to the Expected Closing Date:

i. the Grant Deed duly acknowledged and executed by Seller;

ii. an original of the Memorandum (as defined in Paragraph 14) duly acknowledged and executed by Seller;

iii. an original of the Emergency Use Easement (as defined in Paragraph 15) duly acknowledged and executed by Seller;

iv. an original of the Adjacent Storage Property and Access Road Easement (as defined in Paragraph 7) duly acknowledged and executed by Seller;

v. an affidavit certifying that Seller is not a foreign entity under the Foreign Investment in Real Property Act as specified in Paragraph 7;

vi. a California Form 593-C in the current form as established by the California Franchise Tax Board as specified in Paragraph 7;

vii. a commercially reasonable owner's affidavit as may be requested by Title Company;

viii. an executed Closing statement reasonably acceptable to Seller; and

ix. any other document or agreement required by this Agreement and/or such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

b. Buyer's Deliveries. The following documents and sums shall be submitted by Buyer to Escrow Holder at or prior to the Expected Closing Date:

i. Sufficient immediately available wire transfer funds which, when added to the Deposit and accrued interest are sufficient to pay the (x) Purchase Price and (y) Buyer's share of closing costs;

ii. an original of the Memorandum (as defined in Paragraph 14) duly acknowledged and executed by Seller;

iii. an original of the Emergency Use Easement duly acknowledged and executed by Buyer;

iv. an original of the Adjacent Storage Property and Access Road Easement, duly acknowledged and executed by Buyer;

v. to the extent reasonably required by Escrow Holder, proof of Buyer's authority and authorization to enter into this Agreement;

vi. an executed closing statement reasonably acceptable to Buyer; and

vii. any other document or agreement required by this Agreement and/or such additional documents as shall be reasonably required to consummate the transaction contemplated by this Agreement.

c. Closing Conditions.

i. Conditions to Buyer's Obligations: Buyer will have no obligation to purchase the Property and consummate the Closing unless each of the following conditions precedent has been satisfied or waived by Buyer as of the Expected Closing Date:

1. Title Company shall issue or be unconditionally and irrevocably committed to issue to Buyer the Title Policy (as defined below);

2. Seller shall cause all Monetary Liens (as defined below), if any so exist, be released, or otherwise removed from record title to the Property upon Closing. As used herein, "**Monetary Liens**" means any and all monetary liens or encumbrances recorded against the Property regardless of whether the same arise before or after the Due Diligence Period; provided, however, Monetary Liens shall not include (a) real estate taxes and assessments not yet due and payable, (b) monetary liens, encumbrances, or obligations imposed as a result of the acts of Buyer or any of Buyer's agents, employees, contractors or subcontractors (or, with respect to Paragraph 14(a) [regarding the Repurchase Option and ROFR] only Seller or any of Seller's agents, employees, contractors, or subcontractors), or (c) covenant or restriction on the use or change of the use of the Property resulting from (i) any contract with or monetary assistance provided by any governmental authority or entity, such, as by way of example only, any Williamson Act contract, or (ii) any other cause or circumstance.

3. Seller and Escrow Holder, respectively, shall have performed all of their covenants and obligations set forth in this Agreement;

4. Each of the representations and warranties of Seller in this Agreement will be materially true and correct as of the Effective Date and as of the Expected Closing Date with the same force and effect as if remade by Seller in a separate certificate at that time;

5. Buyer shall not have terminated this Agreement pursuant to the contingencies set forth in Paragraph 9; and

6. Buyer shall have received from Seller an estoppel certificate (the "**Tenant Estoppel Certificate**") from each tenant under each Existing Lease (excluding the lease with the Napa County Office of Education (the "**NCOE Lease**")), if any, which in each case is substantially in the form of

Exhibit G, or as otherwise required by any Existing Lease, and which does not disclose matters materially adverse to the Property or Buyer's purchase thereof, that are not set forth in the applicable Existing Lease or disclosed in the Seller's Documents or otherwise discovered by Buyer during the Due Diligence Period ("**Material Adverse Information**"). In the event an Existing Lease does not require the tenant thereunder to provide an estoppel certificate, Seller shall nonetheless use commercially reasonable efforts to obtain a Tenant Estoppel Certificate from such tenant as well as each other tenant under the Existing Leases. As long as Seller uses such commercially reasonable efforts to obtain such Tenant Estoppel Certificates, Seller shall not be deemed to be in breach of this Agreement because it does not obtain an Estoppel Certificate from any such tenant.

7. Notwithstanding the above, if Seller is unable to obtain Tenant Estoppel Certificates for each tenant under the Existing Leases (excluding the NCOE Lease), then Seller shall deliver a certificate to Buyer on or before the Expected Closing Date from Seller in the form attached hereto as **Exhibit G-1** (a "**Landlord Estoppel Certificate**") executed by Seller for any tenant for which no Tenant Estoppel Certificate has been previously delivered to Buyer, and in such event Seller shall be deemed to have delivered an Tenant Estoppel Certificate with respect to such tenant for purposes of satisfying the condition under this subparagraph 7 subject to Buyer's approval rights as set forth below. The Landlord Estoppel Certificate shall be subject to the damage limitations set forth in Paragraph 26c and Survival Period set forth in Paragraph 17, but otherwise Buyer shall be entitled to rely on the same. Buyer shall have at least two (2) business days to review and approve any Landlord Estoppel Certificate (which approval shall be given unless the Landlord Estoppel Certificate contains any Material Adverse Information) and, if necessary for such to occur, the Expected Closing Date shall be extended notwithstanding anything to the contrary in this Agreement. Any Buyer disapproval of a Landlord Estoppel Certificate shall constitute Buyer's decision to terminate this Agreement due to a failure of the subject Estoppel Certificate condition unless Buyer otherwise elects to close under this Agreement. Notwithstanding the above, if Seller delivers a Landlord Estoppel Certificate to Buyer, and a Tenant Estoppel Certificate is subsequently received from the applicable tenant, then the Tenant Estoppel Certificate in question shall replace the Landlord Estoppel Certificate, and Seller shall not have any obligations or liabilities under said Landlord Estoppel Certificate, except and to the extent that the Tenant Estoppel Certificate is received after Closing and contains Material Adverse Information not set forth in the Landlord Estoppel Certificate.

If any of the conditions precedent in favor of Buyer set forth in Paragraph 21.c.i are neither satisfied nor waived by Buyer by the Expected Closing Date, then, Buyer (at its option) may terminate this Agreement by giving a written notice of termination to Seller

as and to the extent provided in Paragraph 11. In the case of any such termination, (i) the escrow shall terminate, (ii) Buyer will have no further obligation to purchase the Property from Seller, (iii) Seller will have no further obligation to sell the Property to Buyer, and (iv) the Parties will have no further obligation to one another, except as otherwise expressly provided herein. In the event of such a termination, the Deposit (exclusive of the Independent Consideration) shall be returned to Buyer. Notwithstanding anything to the contrary contained herein, in the event of a failure of any condition precedent specified in this Paragraph 21.c.i. that is caused by a default hereunder on the part of Seller, then in lieu of terminating this Agreement and escrow pursuant to this Paragraph 21.c.i., then Buyer shall be entitled to exercise its rights pursuant to the provisions of Paragraph 26.c.

ii. Conditions to Seller's Obligations: Seller will have no obligation to sell the Property and consummate the Closing unless each of the following conditions precedent has been satisfied or waived by Seller as of the Expected Closing Date:

1. Buyer and Escrow Holder, respectively, shall have performed all of its covenants and obligations set forth in this Agreement;

2. Each of the representations and warranties of Buyer in this Agreement will be materially true and correct as of Effective Date and as of the Expected Closing Date with the same force and effect as if remade by Buyer in a separate certificate at that time; and

3. Buyer shall not have terminated this Agreement pursuant to the contingencies set forth in Paragraph 9.

If any of the conditions precedent in favor of Seller set forth in this Paragraph 21.c.ii are neither satisfied nor waived by Seller by the Expected Closing Date, then Seller (at its option) may terminate this Agreement by giving a written notice of termination to Buyer as and to the extent provided in Paragraph 11. In the case of any such termination, (i) the escrow for this Agreement shall terminate, (ii) Seller will have no further obligation to sell the Property to Buyer, (iii) Buyer will have no further obligation to purchase the Property from Seller, and (iv) the Parties will have no further obligation to one another, except as otherwise expressly provided herein. In the event of such a termination, the Deposit shall be returned to Buyer. Notwithstanding anything to the contrary contained herein, in the event of a failure of any condition precedent specified in this Paragraph 21.c.ii. that is caused by a default hereunder on the part of Buyer, then in lieu of terminating this Agreement and escrow pursuant to this Paragraph 21.c.ii., Seller shall be entitled to exercise its rights pursuant to the provisions of Paragraph 26.b.

d. Closing Procedures. On the Expected Closing Date, Escrow Holder will close escrow as follows:

i. record the Grant Deed (marked for return to Buyer) with the County Recorder of Napa County, which will be deemed delivery to Buyer (and Escrow Holder shall

also provide a copy of the Grant Deed to Buyer with the recording information provided thereon);

ii. record the Emergency Use Easement, the Adjacent Storage Property and Access Road Easement and the Memorandum with the County Recorder of Napa County and provide copies thereof with the recordation contained thereon to Buyer and Seller;

iii. issue the Title Policy, and cause it to be delivered to Buyer;

iv. charge Buyer for those costs and expenses to be paid by Buyer pursuant to this Agreement and disburse any net funds remaining after the preceding disbursements to Buyer;

v. disburse to Seller the Purchase Price remaining after payment of the commission and any prorated amounts and charges to be paid by or on behalf of Seller, and disburse to Buyer the balance of any remaining funds in escrow;

vi. prepare and deliver to both Buyer and Seller one signed copy of Escrow Holder's closing statement showing all receipts and disbursements of the funds in escrow;

vii. deliver to Buyer the FIRPTA Affidavit and the California Form 593-C (or any successor thereto);

viii. deliver any other documents and complete such other acts as required of Escrow Holder hereunder; and

ix. close escrow within the meaning of Section 6045 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and promptly file all necessary information reports and returns regarding this transaction as required by the Code, including, without limitation, the returns required pursuant to Section 6045 of the Code.

22. **TITLE INSURANCE.** At Closing, Escrow Holder shall cause to be issued to Buyer a standard coverage owner's form policy of title insurance effective as of the Closing, issued by Placer Title Company or any national title insurance company, such as Stewart Title, which underwrites policies for escrows handled by Escrow Holder, ("**Title Company**") in the full amount of the Purchase Price, insuring title to the Property vested in Buyer, subject only to the Permitted Exceptions (the "**Title Policy**"). At its own cost, to the extent available, Buyer may elect to obtain an ALTA extended coverage owner's title policy and/or any endorsements Buyer deems appropriate, but such extended coverage shall not be a condition of Closing.

23. **INSURANCE.** Any insurance which Seller may have maintained for the Property or any insurance thereon will terminate on the Closing. It is Buyer's sole responsibility to obtain appropriate insurance to cover the Property after Closing.

24. **ASSIGNMENT OF LEASE.** During the Due Diligence Period, Buyer shall review all Existing Leases. Prior to the Effective Date, Seller has provided Buyer with the Existing Leases identified in **Exhibit E**. After the Effective Date, Seller will not enter into any new leases or other occupancy agreements for any portion of the Property (each a "**New Lease**") without Buyer's written consent, which consent may be withheld or granted in Buyer's sole and absolute discretion, except as follows: Nothing set forth above shall preclude or prevent Seller from allowing the Property to be used for staging areas for emergency personnel during wildfires or similar disasters; a community resource center during public safety power shutoffs; and/or entering into any short-term leases, licenses, or renewals of Existing Leases; provided, however, each such use, lease, license or renewal shall have a term ending before the Expected Closing Date or permit Seller to terminate the same before the Expected Closing Date, which termination Seller shall cause to occur before the Expected Closing Date unless Buyer elects otherwise in its sole and absolute discretion. Buyer may request of Seller that it terminate any Existing Lease or New Lease prior to Closing that has not yet terminated, or will not otherwise terminate pursuant to its terms prior to Closing, if the terms of such Existing Lease or New Lease (if any) expressly permit Seller to so terminate it (or the tenant is on a month-to-month basis), and the Existing Lease or New Lease does not require the payment of any sum, cost or expense to so terminate it, and Seller shall terminate any such Existing Lease or New Lease once all other Closing contingencies have been waived or satisfied. At Closing, Seller shall assign, and Buyer shall assume any other Existing Leases or New Leases that are not so terminated, pursuant to commercially reasonable assignment and assumption agreements.

25. **INTEGRITY OF PROPERTY.** Except as otherwise provided herein or by express written permission granted by Buyer, Seller shall not, after the Effective Date until the Close of Escrow, alienate, lien, encumber or transfer the Property or any interest therein or allow the same to occur, intentionally cause or allow any physical changes on the Property, or enter into an lease or contract with respect to the Property or any portion thereof, which would survive the Close of Escrow or otherwise materially impair Buyer's use of the Property.

26. **DEFAULT.**

a. Notice of Default; Cure Period. With respect to a default or breach by either Party hereunder, neither Party will be in default under this Agreement unless and until the other Party gives the defaulting Party written notice specifying the default or defaults and such default or defaults have not been cured within two (2) business days from the defaulting Party's receipt of such notice.

b. Liquidated Damages. **IF BUYER FAILS TO COMPLETE THE PURCHASE PROVIDED FOR IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELEASED FROM SELLER'S OBLIGATION TO SELL THE PROPERTY TO BUYER. FURTHER, BY INITIALING THIS PARAGRAPH 26b BUYER AND SELLER AGREE AND UNDERSTAND THAT IN EVENT OF DEFAULT BY BUYER, (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES; (B) AN AMOUNT EQUAL TO THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S**

DAMAGES IF THE CLOSING DOES NOT OCCUR BY REASON OF BUYER'S DEFAULT HEREUNDER AND SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER; (C) THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE AND SOLE REMEDY OF SELLER AT LAW OR IN EQUITY; (D) SELLER MAY RETAIN THAT PAYMENT ON ACCOUNT OF THE PURCHASE PRICE FOR THE PROPERTY AS LIQUIDATED DAMAGES; AND (E) PAYMENT OF THOSE SUMS TO SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. THE PARTIES HAVE FREELY NEGOTIATED THE FOREGOING LIQUIDATED DAMAGES PROVISION IN GOOD FAITH. NOTHING SET FORTH IN THIS PARAGRAPH 26.b. SHALL SERVE TO LIMIT ANY INDEMNITY OBLIGATION OF BUYER UNDER THIS AGREEMENT OR ANY POST-CLOSING OBLIGATION OF BUYER. EXCEPT AS EXPRESSLY PROVIDED ABOVE, SELLER HEREBY WAIVES AND RELEASES ANY RIGHT SELLER OTHERWISE POSSESSES TO RECOVER OR SEEK TO RECOVER ANY DAMAGES ARISING OUT OF A DEFAULT UNDER THIS AGREEMENT BY BUYER PRIOR TO CLOSING, INCLUDING, WITHOUT LIMITATION, ANY CONSEQUENTIAL (INCLUDING LOST PROFITS), SPECIAL OR GENERAL DAMAGES OF ANY NATURE OR KIND (EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR FOR ANY PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCES, AND ALL SUCH DAMAGES CLAIMS ARE HEREBY WAIVED BY SELLER TO THE FULLEST EXTENT PERMITTED BY LAW.

c. SELLER Default. IF, AT CLOSING, SELLER IS IN DEFAULT OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND SUCH DEFAULT CONTINUES BEYOND THE PERIOD SPECIFIED IMMEDIATELY ABOVE IN PARAGRAPH 26.a, THEN BUYER SHALL HAVE THE RIGHT TO ELECT, AS ITS SOLE AND EXCLUSIVE REMEDY, TO TAKE ONE (1), BUT NOT MORE THAN ONE (1), OF THE FOLLOWING ACTIONS: (i) terminate this Agreement by written notice to Seller, promptly after which the Deposit shall be returned or released to Buyer and neither Seller nor Buyer shall have any liability hereunder except for those obligations which expressly survive the termination of this Agreement; (ii) waive the default and proceed to Closing; or (iii) file an action for specific performance; provided, however, that no such action shall be deemed timely unless Buyer files and serves the same within no later than ninety (90) days after the earlier of (x) the date the applicable Seller's default occurred or (y) what would have been the Expected Closing Date, but for Seller's default, and any such action filed or served thereafter shall be deemed time barred. EXCEPT AS EXPRESSLY PROVIDED ABOVE, AND EXCEPT FOR SELLER'S POST-CLOSING OBLIGATIONS UNDER THIS AGREEMENT, BUYER HEREBY WAIVES AND RELEASES ANY RIGHT BUYER OTHERWISE POSSESSES TO RECOVER OR SEEK TO RECOVER ANY DAMAGES ARISING OUT OF THIS AGREEMENT

AND/OR ESCROW THEREFOR, INCLUDING, WITHOUT LIMITATION, ANY CONSEQUENTIAL (INCLUDING LOST PROFITS), SPECIAL OR GENERAL DAMAGES OF ANY NATURE OR KIND (EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), OR FOR ANY PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCES, AND ALL SUCH DAMAGES CLAIMS ARE HEREBY WAIVED BY BUYER TO THE FULLEST EXTENT PERMITTED BY LAW.

27. **FURTHER ASSURANCES AND CONTINGENCIES.** The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties. Such acts shall include, but not be limited to, compliance by Buyer and Seller with California Government Code section 65402.

28. **GENDER, NUMBER.** As used herein, the singular shall include the plural and the masculine shall include the feminine, wherever the context so requires.

29. **GOVERNING LAW; VENUE.** This Agreement shall be governed, interpreted, construed, and enforced in accordance with the laws of the State of California and, subject to Paragraph 46, any litigation brought hereunder in state court shall be brought in the Superior Court of California, County of Napa, a unified court.

30. **HEADINGS.** The captions and paragraph and subparagraph headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit, or affect the construction or interpretation of any term or provision hereof.

31. **CONSTRUCTION.** This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

32. **WAIVER OF BREACH.** No waiver by any Party of any breach of this Agreement shall be deemed a waiver of any other or subsequent breach.

33. **NO OTHER INDUCEMENT.** The making, execution and delivery of this Agreement by the Parties hereto has been induced by no representations, statements, warranties, or agreements other than those expressed herein.

34. **SEVERABILITY.** If any term, provision, covenant, or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall be severable and shall not be affected thereby, and each of the remaining terms, provisions, covenants, or conditions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

35. **SUCCESSORS.** All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

36. **TIME.** Time is of the essence of each provision of this Agreement. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice or approval shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

37. **WAIVER OF PERFORMANCE.** The waiver by one Party of the performance of any term, provision, covenant, or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such Party of any other term, provision, covenant, or condition. Delay by any Party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant, or condition shall not prevent such Party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.

38. **ATTORNEYS' FEES.** Should any litigation be commenced between the Parties to this Agreement concerning the sale or the rights or duties of the Parties in relation thereto, the Party prevailing in such litigation shall be entitled, in addition to such other relief as may be provided by this Agreement, to a reasonable sum as and for attorney's fees and costs in such litigation, or in a separate action brought for that purpose. For purposes of this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the prevailing Party, which may also include printing, photostating, duplicating, air freight charges and other expenses, as well as the fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney.

39. **NOTICES.** All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given and effective: (i) on the date of delivery if served personally on the Party to whom notice is to be given or, unless otherwise specifically provided or required by this Agreement; (ii) if sent by overnight delivery, such as by Federal Express, or mailing by first class, registered or certified mail, postage prepaid, on the date said notice or other writing is delivered or on which delivery is refused; or (iii) if by electronic mail, in which case it will be deemed delivered on the date sent, and properly addressed as follows:

BUYER:

City of Calistoga
1232 Washington St.
Calistoga, CA 94515
ATTN: City Manager
Email: lsnideman@ci.calistoga.ca.us

With a copy to:

City Attorney
Burke, Williams & Sorensen, LLP
1901 Harrison St., Suite 900
Oakland, CA 94612
ATTN: Michelle Marchetta Kenyon
Email: mkenyon@bwslaw.com

SELLER:

Napa County
County Executive Office
1195 Third Street, Suite 319
Napa, California 94559
ATTN: Ryan Alsop
Email: ryan.alsop@countyofnapa.org

With a copy to:

Napa County
Office of Napa County Counsel
1195 Third Street, Suite 301
ATTN: Sheryl Bratton
Email: sheryl.bratton@countyofnapa.org

With an additional copy to (only until the Closing occurs):

Miller Starr Regalia
1331 N. California Blvd., Suite 600
Walnut Creek, CA 94596
Attn: Michael Di Geronimo
Email: michael.digeronimo@msrlegal.com

Any Party may change its address for purposes of this paragraph by giving the other Party written notice of the new address in the manner set forth above.

40. CLOSING COSTS, FEES AND PRORATIONS.

a. Buyer shall pay all closing costs including but not limited to real property taxes, assessments, documentary transfer taxes, title insurance desired by Buyer (including the premiums for the Title Policy), escrow and recording fees. Additionally, with respect to the costs of curing any Exception, which Seller has agreed to cure, if any, as specified in Paragraph 9 above, Seller shall pay for all costs thereof. Each Party will be responsible for and bear all of its own costs and expenses incurred in connection with the proposed purchase and sale, including without limitation, all accounting, legal and other fees and expenses.

b. All fixed and additional rentals under any Existing Lease or new lease to the extent permitted by Buyer, if any, in effect at Closing shall be prorated subject to the following: Seller shall deliver or provide a credit in an amount equal to all prepaid rentals for periods after the Expected Closing Date and all refundable cash security deposits (to the extent the foregoing was made by the applicable tenant and not applied or forfeited prior to the Closing) to Buyer on the Expected Closing Date. All delinquent fixed, base or

minimum rent, reimbursable tenant expenses and any and all additional rent, sums or expenses owed by any tenant under any Existing Lease or New Lease ("**Delinquent Rent**") shall not be prorated on the Expected Closing Date. Rather, with respect to any such Existing Lease or New Lease, Buyer shall cause any such Delinquent Rents for the period prior to Closing to be remitted to Seller if, as and when collected, subject to the following: At Closing, Seller shall deliver to Buyer a schedule of all such Delinquent Rents. To the extent Buyer receives payment of rents (or income in connection with other tenant charges) no matter how identified on or after the Expected Closing Date, such payments shall be applied first toward the rent (or other tenant charge) for the month in which the Closing occurs then to the rent (or other tenant charge) owed to Buyer in connection with the applicable Lease or other document for which such payments are received, and then to any Delinquent Rents (or other tenant charges) owed to Seller, with Seller's share thereof being promptly delivered to Seller; provided, however, that any year-end or similar reconciliation payment shall be allocated as hereinafter provided. Buyer may not waive any Delinquent Rents or modify a Lease so as to reduce or otherwise affect amounts owed thereunder for any period in which Seller is entitled to receive a share of charges or amounts without first obtaining Seller's written consent. Seller hereby reserves the right to pursue any remedy for damages against any tenant owing Delinquent Rents and any other amounts to Seller (but following the Closing shall not be entitled to terminate any Lease or any tenant's right to possession), provided that, Seller shall not exercise any such remedy for a period of two (2) months after the Closing. Buyer shall reasonably cooperate with Seller, at no material out-of-pocket cost to Buyer, in any collection efforts hereunder, but shall not be required to litigate or declare a default under any Lease. Notwithstanding the above, Buyer shall have no obligation to deliver any Delinquent Rent received by Buyer more than fourteen (14) months after the Closing and after said period shall have no further duty to cooperate with Seller with respect to the collection of any Delinquent Rents. With respect to Delinquent Rents and any other amounts or other rights of any kind respecting tenants who are no longer tenants of the Property as of the Expected Closing Date, Seller shall retain all of the rights relating thereto.

41. **REAL ESTATE BROKERS.** The Parties acknowledge and agree that there are no brokers representing the Parties or due any fees and/or commissions under this Agreement. Buyer and Seller each represent and warrant to the other that they have had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement and/or the consummation of the purchase and sale contemplated herein, and that no broker or other person, firm or entity is or are entitled to any commission or finder's fee in connection with this transaction as the result of any dealings or acts of such Party. Seller and Seller do each hereby agree to indemnify, defend, protect, and hold the other harmless from and against any costs, expenses or liability for compensation, commission or charges which may be claimed by any broker, finder, or other similar party, by reason of any dealings or act of the indemnifying Party.

42. **COUNTERPARTS AND .PDF / FACSIMILE SIGNATURES.** This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, and all of which when together shall constitute one and the same instrument. Escrow Holder, after verifying that the counterparts are identical except for the signatures, is authorized and instructed

to combine the signed signature pages on one of the counterparts, which shall then constitute the Agreement. In order to expedite the transaction contemplated herein, facsimile and/or .pdf (including by DocuSign) signatures may be used in place of original signatures on this Agreement. Seller and Buyer intend to be bound by the signatures on the electronically transmitted document, are aware that the other Party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

43. **RELATIONSHIP OF BUYER AND SELLER.** Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the Parties hereto partners or joint venturers, or to render either Party liable for any of the debts or obligations of the other, it being the intention of the Parties to merely create the relationship of Seller and Buyer with respect to the Property to be conveyed hereby.

44. **AUTHORITY TO SIGN; CERTAIN RIGHTS DELEGATED TO SELLER'S CHIEF EXECUTIVE OFFICER.** Each Party and the signatories for that Party represent and warrant that the Party's signatories to this Agreement are authorized to enter into this Agreement on behalf of that Party and that no other authorizations are required to implement this Agreement on behalf of that Party. The Parties agree that written evidence of such authorization shall be submitted by each Party to the other Party prior to the Close of Escrow. Such evidence may be in the form of a certified copy of the minutes of the governing board of the Party approving such Agreement and authorizing signature thereof. Notwithstanding anything in this Agreement to the contrary, Seller's chief executive officer (Ryan Alsop) is hereby authorized on behalf of Seller to agree in an writing signed by him to extend the Due Diligence Period, Title Inspection Period, the Closing Date, and/or other similar dates specified in this Agreement (as originally signed or amended) as well as to sign any amendments contemplated by this Agreement as of the Effective Date.

45. **FORCE MAJEURE**. Neither Party hereunder shall be deemed to be in default under this Agreement, and all performance and other dates specified in this Agreement shall be extended where a delay in the Party's ability to perform is due to: war; insurrection; strikes and labor disputes; lockouts; riots; floods; pandemics, earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine restrictions; freight embargoes; governmental restrictions, or any other cause beyond that Party's reasonable control and without its fault or negligence (each a "**Force Majeure Delay**"). Acts or failures to act of Buyer shall not excuse performance by Buyer and acts or failures to act of Seller shall not excuse performance by Seller. Buyer's inability or failure to obtain financing or purchase funds for the purchase of the Property shall not be the basis for a Force Majeure Delay, except to the extent that the delivery of purchase funds in Buyer's possession or control was caused by one of the Force Majeure Delays enumerated above. An extension of time for any such Force Majeure Delay shall be for the period of the forced delay and shall commence to run from the time of the commencement of the cause of the delay until the cause of the delay has ceased, provided, and on the condition that the Party claiming such extension must send to the other Party written notice of such Force Majeure Delay (and the basis therefor) within ten (10) days of the commencement of the Force Majeure Delay or such Party waives its right to claim a Force Majeure Delay hereunder.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the last date of execution below.

BUYER:	**CITY OF CALISTOGA** By: _____ Name: _____ Its: _____ Date: _____, 202__
	APPROVED AS TO FORM: City Attorney: By: _____ Name: _____
SELLER:	**NAPA COUNTY**, a political subdivision of the State of California By: _____ Joelle Gallagher, Chair of the Board of Supervisors Dated: _____, 202__ APPROVED AS TO FORM: Office of County Counsel By: _____ County Counsel APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS: Dated: _____ Processed By:

	_____ Deputy Clerk of the Board ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

JOINDER AND ACCEPTANCE BY ESCROW HOLDER

Placer Title Company referred to in this Agreement as "Escrow Holder," hereby acknowledges that it received this Purchase and Sale Agreement and Escrow Instructions executed by Seller and Buyer on or about _____, 202_, and accepts the obligations of Escrow Holder as set forth herein.

PLACER TITLE COMPANY

By: _____
Name: _____
Title: _____

Exhibit A
Description of Fairgrounds Property

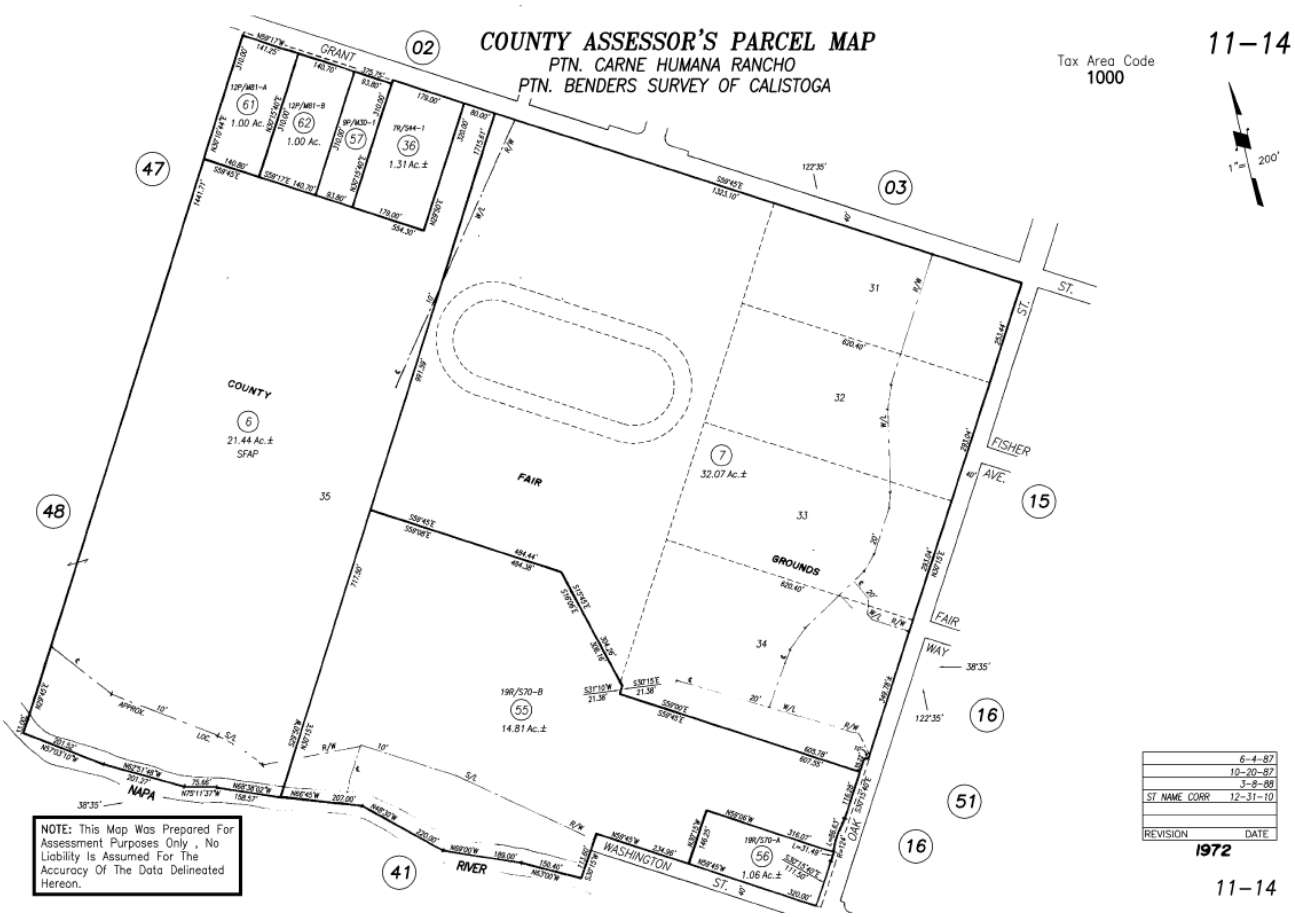

Exhibit A
[Continued]

The land referred to in this report is situated in the City of Calistoga, County of Napa, State of California, and is described as follows:

TRACT ONE:

PARCEL ONE:

Commencing at the most Northerly corner of the 15.62 acre tract of land described in deed to P. Rubbattino et al recorded September 30, 1916, in Book 116 of Deeds, at page 114, said Napa County Records; thence from said point of beginning S 29° 45' W, along the westerly line of said Tract 320.00 feet to the true point of beginning thence from said true point of beginning S 59° 45' E 554.30 feet; thence N 29° 50' E 320.00 feet to the northerly line of Lot 35 as shown on the map entitled, "Map of Calistoga Lands, as surveyed in 1871 and Subdivided in part in 1876" filed April 20, 1877, Napa County Records; thence S 59° 45' E along said northerly line, 80.00 feet to the westerly line of the Napa County Fair Grounds, described in deed of record in Book 130 of Official Records at page 215, Napa County Records; thence S 29° 50' W along said westerly line 1715.61 feet to the center of the Napa River; thence along the center of the Napa River the following courses and distances, N 68° 38' 02" W 158.57 feet; thence N 75° 11' 37" W 75.66 feet; thence N 62° 51' 48" W 201.27 feet; thence N 57° 03' 10" W 201.52 feet to the westerly line of said 15.62 acre tract; thence continuing northwesterly along the center of the Napa River to the center of Musgrove Creek; thence northerly along the center of Musgrove Creek to a point on a line which bears N 84° 15' 03" W from a point which lies S 29° 42' 44" W 80.11 feet from the most easterly corner of Lot 28 as shown on the "Final Map of Fairway Vista" recorded in Book 15 of Record Maps at Pages 4 and 5, Napa County Records; thence S 84° 15' 03" E to the southeasterly line of said Lot 28; thence N 29° 42' 44" E along the southeasterly line of Fairway Vista 1164.46 more or less to the point of beginning.

APN: 011-481-022 and 011-140-006

TRACT TWO:

PARCEL ONE:

Lots numbered 31,32,33, 34 and the East one-half of Lot 35 as the said lots are laid down and delineated upon a certain map entitled "Map of Calistoga Lands, as Surveyed in 1871 and Subdivided in Part In 1876" filed April 20,1877 in the office of the County Recorder of said Napa County.

Excepting therefrom the following:

(a) All that portion of said Lots 31, 32 and 33 which lies southeasterly of the northeasterly extension of the southeasterly line of said Lot 34.

(b) 6.71 acres of land, more or less, of said Lot numbered 34, heretofore conveyed by Susan J. McFarling to F.M. Crumley by deed of record in Volume 98 of Deeds at page 48, Napa County Records.

(c) 11 38 acres of land, more or less, of said Lot numbered 35, heretofore conveyed by Susan J McFarling to Francis M. Crumley by deed of record Volume 112 of Deeds at page 94, Napa County Records.

APN: 011-140-007 (Ptn.)

PARCEL TWO:

Commencing at the most eastern comer of that certain parcel of land described in the deed of John B Logvy et ux of record in Book 161 of Official Records, page 306, said Napa County Records, and running thence along the northerly boundary thereof, North 59° 45’ West, 615.78 feet and South 30° 15’ West, 103 62 feet to a corner of said parcel: thence continuing South 30° 15’ West 21.38 feet; thence South 59° 45' East 615.78 feet to a point on the northwesterly line of Oak Street; and thence North 30° 15' East and along said last mentioned line 125.00 feet to the point of beginning.

APN: 011-140-007(Ptn.)

PARCEL THREE:

Beginning at the point formed by the intersection of the Westerly line of the city street known as "Oak Street" with the northerly line of the city street known as "Washington Street," thence from said point of beginning along said northerly line N 59° 45' W 330.00 feet to the point of commencement along said northerly line N 59° 45' W 234.96 feet; thence S 30°15' W 113.60 feet to the centerline of the Napa River, thence along the centerline the following courses and distances: N 63° 00' W 150.40 feet, N 69° 00' W 189.00 feet; N 48° 30' W 220.00 feet; and N 66° 45' W 207.00 feet to the southeast corner of the tract of land conveyed to the County of Napa in deed of record in Volume 548, at Page 14, Official Records; thence along the easterly line of said tract of land N 30° 15' E 717.50 feet to the southwest corner of the tract of land conveyed to the County of Napa in deed of record in Volume 130, Page 215, Official Records, thence along the Southerly line of said tract S 59° 08' E 484.38 feet; thence leaving said southerly line S 16° 06' E 306.16 feet; thence S 31° 10' W 21.39 feet to the southwest corner of the parcel of land conveyed to the County of Napa in deed of record in Volume 746 at Page 370, Official Records; thence along the Southerly line of said parcel S 59°45' E 617.55 feet to the westerly line of the City street known as "Oak Street," thence along the westerly line S 30°15' W 202.28 feet; thence S 31° 10' W 21.38 feet to the Southwest corner of the parcel of land conveyed to the County of Napa in deed of record in Volume 746 Page 370, Official Records; thence along the Southerly line of said parcel S 59° 45' E 617.55 feet to the westerly line of the City street known as "Oak Street," thence along said westerly line S 30°15' W, 202.28 feet; thence N 59° 06' W 330.02 feet; thence S 30°15' W 146.25 feet to the point of commencement.

APN: 011-140-055

Exhibit A-1
Depiction of Retained Land

[Attached]

Exhibit B
Grant Deed

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	
MAIL TAX STATEMENTS TO:	

(Space Above This Line For Recorder's Use Only)

DOCUMENTARY TRANSFER TAX IS $0. THIS TRANSFER IS EXEMPT FROM DOCUMENTARY TRANSFER TAX PURSUANT TO R&T CODE §11922.

EXEMPT FROM RECORDING FEES PURSUANT TO GOV. CODE § 27383

THE PROPERTY IS LOCATED IN CALISTOGA, CALIFORNIA. APN(S): 011-140-055, 011-140-006, 011-140-007 and 011-481-022

GRANT DEED

For valuable consideration, NAPA COUNTY, a political subdivision of the State of California hereby grants to the CITY OF CALISTOGA, a general law city, all that certain real property located in the City of Calistoga, County of Napa, State of California, more particularly described on Schedule 1 attached hereto and incorporated herein by reference, together with all rights and privileges appurtenant thereto, subject to all matters of record (including a right of first refusal and purchase option as referenced more fully in that Declaration of Covenants and Memorandum of Option and Right of First refusal to Purchase recorded on even date herewith) and all matters that would be shown by an accurate survey of the Property.

Dated this ____ day of _____, 202__.

GRANTOR:

NAPA COUNTY, a political subdivision of the State of California

By:_____
_____, Chair of the
Board of Supervisors

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, the undersigned, a notary public for the state, personally appeared _____, proved to me to be the person(s) whose name(s) is/are subscribed to the within instrument, as a witness thereto, on the oath of _____, a credible witness who is known to me and provided a satisfactory identifying document. _____, being by me duly sworn, deposed and said that he/she/they was present and saw/heard _____, the same person(s) described in and whose name(s) is/are subscribed to the within, or attached, instrument in his/her/their authorized capacity(ies) as a party(ies) thereto, execute or acknowledge executing the same, and that said affiant subscribed his/her/their name(s) to the within instrument as a witness at the request of _____.

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Legal Description

That certain land situated in the County of Napa, State of California, and described as follows:

[*To be inserted*]

Exhibit C
Escrow Holder's General Provisions

1. All funds received in this escrow shall be deposited in a separate escrow fund account or accounts of Placer Title Company (for the benefit of the Parties hereto) with one or more state or national banks duly qualified to do business in the State of California, so that each such account shall be fully insured at all times by the Federal Deposit Insurance Corporation, to the maximum extent permitted by law. All disbursements shall be made by check of Placer Title Company.

2. Escrow Holder is authorized to prepare, obtain, record, and deliver the necessary instruments to carry out the terms and conditions of this escrow and to order to be issued at Close of escrow the policy of title insurance as called for in these instructions. "Close of escrow" shall mean the date instruments are recorded, unless otherwise specified by the Parties.

3. All adjustments and prorations shall be made on the basis of a 365-day year and the actual number of days in the month in which the close of escrow occurs.

4. If applicable, Escrow Holder is instructed to assign any fire and casualty insurance policy delivered to you and to secure any endorsements required in the performance of these instructions. Escrow Holder may assume that said policy is in full force and effect and that all premiums due have been paid.

5. Escrow Holder shall have no responsibility for notifying any of the Parties to this escrow of any sale, resale, loan, exchange, or other transaction involving any property herein described or of any profit realized by any person, firm, or corporation in connection therewith, regardless of the fact that such transaction(s) may be handled by you in this escrow or in another escrow.

6. No notice, demand or change of instruction shall be of any effect in this escrow unless given in writing by all parties affected thereby and except as otherwise specifically provided in the Agreement to which these General Provisions are attached.

7. If the conditions of this escrow have not been complied with at the time herein provided, Escrow Holder is nevertheless to complete the same as soon as the conditions (except as to time) have been complied with, unless any Party hereto has made written demand upon you for the return of money and instruments deposited by it.

8. Unless the Agreement otherwise provides or unless otherwise instructed by either Buyer or Seller, Escrow Holder is authorized to furnish copies of these instructions, any supplements, or amendments thereto, notices of cancellation and closing statements to the attorneys, real estate broker(s) and lender(s), if any, named in this escrow.

9. Any funds abandoned or remaining unclaimed, after good faith efforts have been made by the Escrow Holder to return same to the Party(ies) entitled thereto, shall be assessed a holding fee of Fifty Dollars ($50.00) annually.

10. All documents, closing statements, and balances due the Parties to this escrow are to be wire transferred to said Parties pursuant to separate wire transfer instructions to be delivered to escrow, or if no such separate wire transfer instructions are given to escrow, by Priority U.S. Mail or FEDEX at the addresses set forth in the Agreement of the parties for notices, unless otherwise instructed.

11. Notwithstanding the foregoing, if Escrow Holder is also acting as Title Company under the Agreement, nothing set forth in these General Provisions shall limit any liability set forth in the Title Policy(ies) provided in the Agreement.

12. For purposes of complying with Internal Revenue Code Section 6045(e), as amended effective January 1, 1991, escrow holder is hereby designated as the "person responsible for closing the transaction" and also as the "reporting person," for purposes of filing any information returns with the Internal Revenue Service concerning this transaction, as required by law.

13. Escrow Holder shall assist the Parties in obtaining a waiver of withholding from the Franchise Tax Board with respect to the transactions contemplated by the Agreement in accordance with Section 18662 of the Revenue and Taxation Code of California.

14. Escrow Holder shall assist the Parties in complying with the provisions of Internal Revenue Code Section 1445 (FIRPTA withholding).

Exhibit D
Memorandum

[Attached]

Exhibit D-1
Historical Uses

Public fairs and celebrations, recreational, athletic, social, and other civic and community activities and enterprises of a public nature.

The County Fairgrounds has served as a versatile public open space to facilitate the exchange of goods and services; to celebrate agriculture; to host contests, entertainment, recreational and community events and services.

Communication towers.

Health services (e.g. vaccination clinics, cooling center, food distribution).

Collection events for household hazardous waste disposal service.

School events (e.g. graduations, parties, sports contests, classroom instruction, grad night).

Sports (e.g. cub football, adult softball).

Youth summer camps.

Events (e.g. weddings, wedding receptions, family reunions, quinceaneras, camping reunions for travel groups, memorial services, community fundraisers, Christmas bazaars, food festivals, car shows, horse shows, antiques shows, trade shows, auctions, crab feeds, pancake breakfasts, afternoon teas, dinners, home wine and beer tasting events, trade/agricultural/holiday fairs, livestock exhibits, conventions, flea markets, drive-in movies, dances, bingo, fashion shows, BBQs, card parties, music festivals, concerts, art shows, carnivals, circuses, haunted house, cultural celebrations, exhibitions).

Meetings (e.g. Lions, American Legion, Native Sons of the Golden West, Garden Club, Rock Club, Lions, Native Daughters of the Golden West, American Legion, Soroptimist, Women's Golf Club, Men's Golf Club, Sharpsteen Museum, Rotary, Youth-centric organizations, Cub Scouts, Boy Scouts, Cub Football, Calistoga Little League, Calistoga Wildcat Athletic Boosters, Calistoga Music Boosters, 4-H, FAA, Safe Grad Night, Silverado Riders, NARC/Racing groups, Equestrian groups, Calistoga Firefighters, Knights Valley Volunteer Fire Department, Mountain Volunteer Fire Department, Cal Fire/Napa Fire).

Races and/or racetrack.

Golf / golf course.

RV camping / RV park.

Emergency Evacuation Center.

Camps for emergency responders including during wildfires.

Housing for fairground employees

Museum.

Art Center.

Parking lot.

Recycled water distribution.

Public Safety training and recruitment exercises (e.g. helicopter rescue, agility tests, active shooter, fire suppression, forced entry)

Botanical gardens.

Exhibit D-2
Municipal Code

17.23.020 Uses allowed.

A. Uses allowed in a P district are as follows, and each shall require a use permit:

1. City and County offices, corporation yards, water and wastewater facilities;
2. Parks, libraries, schools, community centers, museums, fairgrounds, churches;
3. Quasi-public uses such as telephone and electric substations;
4. Fraternal buildings and hospitals.

Exhibit D-3
Emergency Use Easement

[Attached]

Exhibit E
Existing Leases

1. That Structure Lease Agreement between the County and New Cingular Wireless PCS, LLC entered into on or about November 25, 2014 (Napa County Agreement No. 8238).

2. Amended and Restated License Agreement for Use of Fairground Facilities, dated August 11, 2020, by and between the County and the Calistoga Art Center, a nonprofit organization (Napa County Agreement No. 200398B), as amended by that Napa County Agreement No. 200398B Amendment No. 1, dated December 8, 2020, that Napa County Agreement No. 200398B Amendment No. 2, dated May 18, 2021, that Napa County Agreement No. 200398B Amendment No. 3, dated June 7, 2022, that Napa County Agreement No. 200398B Amendment No. 4, dated January 10, 2023, and that Napa County Agreement No. 200398B Amendment No. 5, dated June 6, 2023. With the City's written permission, County may extend the above-referenced agreement.

3. Intentionally Omitted.

4. Intentionally Omitted.

5. That Land and Tower Lease Agreement entered into on or about January 24, 2017, by and between the County and GTE Mobilnet of California limited partnership (Napa County Agreement No. 170731B).

6. Ground Lease dated December 4, 2018, by and between the County and the Napa County Office of Education (Napa County Agreement No. 8574) along with that Access and Utility Easement Agreement, dated January 1, 2019, by and between the County and the Napa County Office of Education (Napa County Agreement No. 8575).

7. Intentionally Omitted.

8. That Amended and Restated Space License Agreement for Use of Fairground Facilities, dated December 8, 2020, by and between the County and Silver Rose Property Owner, a limited partnership (Napa County Agreement No. 21098B), as amended by that Amendment No. 1, dated June 8, 2021, and that Assignment and Amendment No. 2, dated December 14, 2021, wherein Licensee's interest was assigned to Calistoga Vines Lessee, Inc., as amended by that Amendment No. 3, dated December 13, 2022, and as amended by that Amendment No. 4, dated June 6, 2023. With the City's written permission, County may extend the above-referenced agreement.

9. That Space License Agreement, dated August 2, 2021, by and between the County and Pacific Gas and Electric Company, a California corporation (Napa County Agreement No. 220111C), as amended by that Napa County Agreement No. 220111C, dated February 24, 2022, and as amended by that Napa County Agreement No. 220111C Amendment No. 2, dated May 24, 2023. With the City's written permission, County may extend the above-referenced agreement.

10. Intentionally Omitted.

11. Intentionally Omitted.

12. That Space License Agreement, dated February 16, 2023, by and between the County and Calistoga Cares! Food Bank, Inc, a California 501(c)3 non-profit organization (Napa County Agreement No. 230327C), as amended by that Napa County Agreement No. 230327 Amendment No. 1, dated May 18, 2023.

Exhibit F
List of Seller's Documents

[To be finalized before the Effective Date]

1. Access and Utility Easement Agreement between the County and Napa County Office of Education entered into as of January 1, 2019 (Napa County Agreement No. 8575).

2. Land Tenure Agreement between Napa County and the State of California, Department of Food and Agriculture, Division of Fairs and Expositions entered into as of January 27, 2004 (Napa County Agreement No. 6243).

3. Correspondence from HomanTeague to the County regarding "David Abreu's Personal Property At Fairgrounds," dated June 2, 2022 and November 22, 2022.

Exhibit G
Tenant Estoppel Certificate

CITY, STATE
Address
PN#

TENANT ESTOPPEL CERTIFICATE

TO:

DATE:

PREMISES:

LEASE DATE:

LANDLORD: ("Landlord")

TENANT: ("Tenant")

MONTHLY BASE RENT:

PERCENTAGE RENT:

LEASE TERM: Lease expires

RENEWAL OPTIONS: As stated in the lease

Ladies and Gentlemen:

To the best of its knowledge and belief, the undersigned Tenant hereby confirms, as of the date hereof, the following:

1. It is currently in possession of the Premises. Tenant has not assigned the Lease or sublet the Premises.

2. The Lease is in full force and effect and represents the entire agreement between Tenant and the Landlord relating to the lease of the Premises, and the Lease has not been amended, modified, changed, supplemented, or clarified, except as follows:

a.

3. Monthly Base Rent is _____ [Insert date]. No rent has been paid more than one month in advance of its due date.

4. To its actual knowledge, Tenant has no defense or offset to Tenant's obligation to pay Rent pursuant to the Lease.

5. Tenant has not received nor has Tenant given any notice of default pursuant to the terms of the Lease which has not been cured, except:

6. The Security Deposit, if any, paid by Tenant is:

7. Tenant has no option, right of first refusal or otherwise to purchase the Property or any portion thereof or any interest therein and the only interest of the Tenant in the Property is that of a tenant pursuant to the terms of the Lease.

This Tenant Estoppel Certificate is given solely for the information of the party to whom it is addressed and may not be relied upon by any other person or entity. Tenant shall be estopped from taking any position contrary to the statements contained in this Tenant Estoppel Certificate in any dispute between Tenant and the party to whom this Tenant Estoppel Certificate is addressed, however, this Tenant Estoppel Certificate shall not in any way create any liability in or provide any right of action against Tenant or its officers, directors, agents, employees, and representatives.

Very truly yours,

_____

By:_____

EXHIBIT G-1
Form of Landlord Estoppel Certificate

TO: CITY OF CALISTOGA, a general law city ("Buyer")

RE: Premises Address: _____ _____, Calistoga, CA (the Premises")
Leases Date: _____

By and Between: NAPA COUNTY, a political subdivision of the State of California ("Landlord") and _____ ("Tenant")

The undersigned is the Landlord of the above-referenced lease and any and all amendments thereto (collectively, the "Lease"). The undersigned hereby acknowledges and certifies to Buyer the following:

1. Tenant is currently in possession of the Premises. To Landlord's actual knowledge, Tenant has not assigned the Lease or sublet the Premises, except as follows: _____.

2. The Lease is in full force and effect and represents the entire agreement between Tenant and Landlord relating to the lease of the Premises, and the Lease has not been amended, modified, changed, supplemented, or clarified, except as follows: _____.

3. Monthly Base Rent is _____ [Insert date]. No rent has been paid more than one month in advance of its due date.

4. To Landlord's actual knowledge, Tenant has no defense or offset to Tenant's obligation to pay Rent pursuant to the Lease.

5. Landlord has not received nor has Landlord given any notice of default pursuant to the terms of the Lease which has not been cured, except as follows: _____.

6. The expiration date of the Lease is _____. Tenant has no options to extend the term of the Lease other than the following:
.

7. The Security Deposit, if any, paid by Tenant is _____.

8. Tenant has no option, right of first refusal or otherwise to purchase the property of which the Premises is a part or any portion thereof, and the only interest of the Tenant in said property is that of a tenant pursuant to the terms of the Lease.

Pursuant to that Purchase and Sale Agreement and Escrow Instruction, dated August __, 2019 for reference purposes, between Landlord, as seller, and Buyer (the "Purchase Agreement"), the undersigned hereby certifies that the information contained in this Landlord Estoppel Certificate is true and correct in all material respects, that the parties to whom this statement is addressed may rely upon said information, and Landlord shall be estopped from taking any position contrary to the statements

contained in this Landlord Estoppel Certificate. To the extent that the Tenant subsequently provides a Tenant Estoppel Certificate as specified more fully in Paragraph 21.c.7 of the Purchase Agreement, the terms of Paragraph 21.c.7 shall apply. Notwithstanding anything to the contrary herein, (1) this Landlord Estoppel Certificate shall not be effective unless and until the "Closing" (as defined in the Purchase Agreement) occurs; (2) Seller shall have no liability under this Landlord Estoppel Certificate except to the extent Tenant makes a claim that constitutes a breach of this Landlord Estoppel Certificate above, and any such liability shall be limited by the damage limitations set forth in Paragraph 26.c of the Purchase Agreement; and (3) this Landlord Estoppel Certificate is subject to the time limitation set forth in Paragraph 17 of the Purchase Agreement, which is referred to therein as the Survival Period.

IN WITNESS WHEREOF, Landlord has executed this Landlord Estoppel Certificate as of _____, 20__.

NAPA COUNTY, a political subdivision of the State of California

By: _____
_____, Chair of the
Board of Supervisors

Dated: _____, 20__

APPROVED AS TO FORM:

Office of County Counsel

By: _____
Deputy County Counsel

Exhibit H
Abreu Claim

[Attached]

Buchalter
1230 Pine Street, St. Helena, CA 94574-1106
Telephone (707) 967-9656 / FAX (707) 963-0771

James R. Rose, Shareholder
E-Mail: jrose@buchalter.com

May 14, 2019

Napa County Fair Association, Inc.
P. O. Box 796
Calistoga, CA 94515

Re: Personal Property at the Calistoga Speedway at the Napa County Fairgrounds Owned by David Abreu, individually, Abreu Vineyards, Inc. and David Abreu Vineyard Management, Inc.

Dear Napa County Fair Association Board of Directors:

This letter is to advise you that property placed at the Calistoga Speedway at the Napa County Fairgrounds since 2013 by David Abreu, Abreu Vineyards, Inc. and David Abreu Vineyard Management, Inc. is personal property belonging to David Abreu and was not placed there on loan to the Calistoga Speedway or Napa County Fairgrounds.

At the time the property listed below was placed by David Abreu, there was not an agreement made with the Napa County Fair Association, Inc., Calistoga Speedway or Napa County that these items would be gifts to the county. The items were placed to ensure the safety of the race car drivers and the spectators at races as well as to enhance the spectator's enjoyment of the races.

The following personal property items remain at the Calistoga Speedway property at the will of David Abreu, Abreu Vineyards, Inc. and David Abreu Vineyard Management, Inc.:

1. Sound system and speakers – bolted on. There are a total of twelve speakers - one single speaker on each end of the racetrack and ten double speakers in front of the grandstands - on 3" poles.
2. 3 digital scoreboards – (turn 2, turn 3, one facing the grandstands on the front straight-away) - bolted on. There is a main vertical ten-digit car position scoreboard and there are two single-digit scoreboards in the corners.

3. Fencing, consisting of
   - 300 – 3" Schedule 40 galvanized pipes (21 ft. tall) - around the track
   - 9 Cables – 27,000 feet of 5/8" cable
   - 2 layers of 2" x 4" horse wire fencing (6 ft. tall) – 6,000 feet of horse wire fencing – tied with wire around pipes
4. Black shade cloth (tied with zip-ties) around 2/3 of the racetrack
5. Start-Finish Flag Stand - bolted-down
6. Flag Pole – 36 ft., 6" stainless steel – bolted down
7. Irrigation timer box in the infield/Rainbird controller – bolted to light pole
8. Valley Internet service equipment – bolted on the football light pole

Should Mr. Abreu wish to remove these items, we will give the Napa County Fair Board Association adequate notice in advance of the removal of these personal property items.

Very truly yours,

BUCHALTER
A Professional Corporation

JAMES R. ROSE

cc: Client
Napa County Board of Supervisors

BN 36429973v1

Exhibit I
Adjacent Storage Property and Access Road Easement

[Attached]


= EXTERIOR OF FAIRGROUNDS PARCEL
= RETAINED PARCEL (1.24+/- ACRES)
= PORTION OF RETAINED PARCEL WITH ACCESS AND USE EASEMENT FOR CITY OF CALISTOGA
0.67+/- ACRES
0.57+/- ACRES (CURRENT NCOE LEASE AREA)
BOYS & GIRLS CLUB

RECORDING REQUESTED AND WHEN RECORDED RETURN TO:

Napa County
Office of Napa County Counsel
1195 Third Street, Suite 301
Attn: Sheryl Bratton

No transfer tax is owed as no property is being conveyed or transferred as of the recordation of this instrument; the transferee or grantee is a public entity; and consideration is less than $100. (Rev. & Tax Code Sections 11911 & 11922)

Exempt from recording fees pursuant to Gov. Code Section 27383

DECLARATION OF COVENANTS AND RESTRICTIONS AND MEMORANDUM OF AGREEMENT RE REPURCHASE OPTION AND RIGHT OF FIRST REFUSAL

THIS DECLARATION OF COVENANTS AND RESTRICTIONS AND MEMORANDUM OF AGREEMENT RE REPURCHASE OPTION AND RIGHT OF FIRST REFUSAL (this "**Declaration and Memorandum**") is entered into as of this _____ day of _____, 202__ (the "**Effective Date**"), by and between COUNTY OF NAPA, a political subdivision of the State of California (the "**County**"), and CITY OF CALISTOGA, a California general law city (the "**City**"). County and City are sometimes individually referred to herein as "**Party**" and together referred to as "**Parties**".

RECITALS

A. County was the owner of approximately +/- 70.6-acres of real property as well as the buildings and other improvements located thereon in the City of Calistoga, County of Napa, commonly known as and used as the Napa County Fairgrounds (collectively, the "**Fairgrounds**").

B. On or about the Effective Date, pursuant to that Napa County Agreement No. _____, Purchase and Sale Agreement and Escrow Instruction, between County, as Seller, and City, as Buyer (the "**Purchase Agreement**"), County sold and transferred the entirety of the Fairgrounds to the City (the "**Property**"), excluding an approximate ___ acre parcel, the ownership of which was retained by the County (the "**Retained Land**"). The Property is more fully described on **Exhibit A** to this Declaration and Memorandum, and the Retained Land is more fully described on **Exhibit B** to this Declaration and Memorandum. The approximate locations of the Property and the Retained Land are designated on **Exhibit C** hereto. The Property and the Retained Land are sometimes individually referred to herein as a "**Parcel**" and collectively as the "**Parcels**".

C. As set forth in the Purchase Agreement, County sold the Property to City at a substantial discount below its fair market value in order to have City own and operate the Property for public purposes consistent with historical uses, as defined herein, of the Fairgrounds for the benefit of the community, all of which City has agreed to do.

D. One of the purposes of this Declaration and Memorandum is to provide record notice of certain provisions of the Purchase Agreement that survived the closing thereunder.

NOW, THEREFORE, for the purposes set forth above and as otherwise set forth below, or good and valuable consideration, the Parties declare that the Parcels shall hereafter be held, used, operated,

transferred, sold, conveyed, and leased subject to the following covenants and restrictions for the entirety of the term of this Declaration and Memorandum:

AGREEMENT

1. Incorporation of Purchase Agreement. The provisions of Paragraph 14 of the Purchase Agreement are incorporated into this Declaration and Memorandum and are set forth below. To the extent that any provisions of this Declaration and Memorandum and the Purchase Agreement conflict, the provisions of the Purchase Agreement shall control; provided, however, that for the avoidance of doubt, the Parties' agreements set forth herein are separate and independent of any provisions of the Purchase Agreement, and shall be binding regardless of any such conflict.

2. Defined Terms. Any capitalized terms contained herein shall have the meaning set forth in the Purchase Agreement as referenced in Section 4 below unless otherwise specified in this Declaration and Memorandum.

3. Historical Uses. City agrees to limit the use of the Property to Historical Uses except to the extent that County consents in writing in its sole and absolute discretion to permit a Proposed Rezoning or elects not, or fails to, exercise its Repurchase Option as specified below.

4. Repurchase Right and Right of First Refusal. Paragraph 14 of the Purchase Agreement provides in pertinent as follow:

> "a. Repurchase Right. Buyer [City] agrees that Seller [County] possesses and hereby grants Seller [County] the right and option to repurchase the Property, or applicable portions thereof, from Seller [County] for a period of ninety-nine (99) years or as otherwise provided in Paragraph 14.c, for the Adjusted Price (as defined below) on and subject to the terms and conditions set forth below (the "**Repurchase Option**"):
>
> i. Right to Exercise the Repurchase Option. Seller [County] may exercise its Repurchase Option if the Property, or any portion thereof, is subject to a Proposed Rezoning (as defined below) except as follows: If Buyer [City] (or any other applicable governmental authority or body) finally denies (i.e. the denial is not subject to any right appeal or legal challenge) the Proposed Rezoning before the Repurchase Closing occurs, then the Repurchase Option for the specific Proposed Rezoning whether or not previously exercised by Seller [County] shall become null and void (but not Seller's [County's] right to exercise its Repurchase Option for other Proposed Rezonings). Unless Seller [County] agrees in its sole and absolute discretion otherwise in writing, Buyer [City] shall not hold a vote on or otherwise approve of any Proposed Rezoning until the time for Seller [County] to deliver Seller's Election Notice has expired.
>
> ii. Exercise of Repurchase Option.
>
> 1. Before any Proposed Rezoning of all or part of the Property occurs, Buyer [City] shall send Seller [County] a written notice in compliance with the notice provisions of this Agreement specifying the Proposed Rezoning and what parts of the Property would be affected thereby (the "**Option Property**"), which notice shall also include the reasons why Buyer [City] wishes to permit or consider the Proposed Rezoning and be

accompanied by a reconciled statement (the "**UCI Value Statement**") certified as being accurate by Buyer's [City's] chief financial officer or an outside auditor of the monetary value of all unamortized capital improvements (amortized in accordance with IRS guidelines), if any, made by Buyer [City] (through the use of the Buyer's [City's] general funds) on the Option Property ("**Unamortized Capital Improvements Value**") along with reasonable supporting documentation (the "**Proposed Change in Use Notice**"). Seller [County] shall have until the later of (x) ninety (90) days after its receipt of the Proposed Change in Use Notice or (y), if Seller [County] has agreed to permit such a vote on or approval to occur pursuant to subparagraph (i) above, thirty (30) days after the Proposed Rezoning has been finally approved to elect to exercise the Repurchase Option for the Option Property by providing notice of Seller's [County's] election to Buyer [City] in accordance with the notice provisions of this Agreement ("**Seller's Election Notice**"). Buyer [City] shall, however, have no obligation to convey the Option Property unless Seller [County] pays the Adjusted Price (as defined below) to Buyer [City] as specified in this Paragraph 14a. No more than once annually, Buyer [City] shall provide Seller [County] with an annual list of capital improvements, if any, made by the Buyer [City] to the Property.

2. Notwithstanding the above, if less than the entirety of the Property is subject to a Proposed Rezoning and such portion of the Property is not a separate legal parcel or parcels in compliance with the California Subdivision Map Act (Government Code Section 66410 et seq. (the "**Map Act**"), then Seller [County] and Buyer [City] shall coordinate to process a lot line adjustment or parcel map creating a separate legal parcel for the portion of the Property subject to the Proposed Rezoning ("**Rezoning Parcel**"). Alternatively, Buyer [City] may determine a parcel map to create the Rezoning Parcel may be waived or that the conveyance of the Rezoning Parcel is exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2). If a Rezoning Parcel is created, whether by map, lot line adjustment, waiver conveyance or exemption, Seller [County] shall be entitled to repurchase the Rezoning Parcel but only for an Adjusted Price calculated on said basis. If (i) the application to create, or waive a map for creation of a Rezoning Parcel is finally denied by Buyer [City] (or other applicable governmental authority or body) (i.e. beyond any applicable appeal or legal challenge period) and (ii) Buyer [City] reasonably determines that the conveyance of the Rezoning Parcel (or what would have been the Rezoning Parcel had the application been approved) would not be exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2) or any successor or other statute or law, then Seller [County] shall be entitled to repurchase the entirety of the legal parcel or parcels on which the land subject to the Proposed Rezoning is located (and which land will be

deemed to be the Option Property), but only for an Adjusted Price calculated on said basis.

iii. Escrow and Closing of the Repurchase. If Seller [County] timely exercises the Repurchase Option, then an escrow shall be opened promptly with Escrow Holder (or any national title company selected by Seller [County] if Escrow Holder is no longer in business) for purposes of facilitating the reconveyance of the Option Property to Seller [County] in accordance with the terms of this Paragraph 14a. In such an event, the closing of the repurchase transaction (the "**Repurchase Closing**") shall take place on the ninetieth (90th) day following the delivery of Seller's Election Notice (the "**Repurchase Closing Date**") or such earlier date as Seller [County] may elect subject to the following conditions and obligations being satisfied (but which date shall be subject to the extension to the extent that the Option Property does not initially entirely consist of one or more legal parcels to allow the process specified in subparagraph (ii) above to be completed). Title to the Option Property shall be conveyed to Seller [County] by a grant deed substantially in the form of Exhibit B to this Agreement. Title to the Option Property shall be subject to all matters of record except Buyer [City] shall cause the Option Property to be conveyed free and clear of all Monetary Liens (the "**Excluded Exceptions**"). As a condition of the Repurchase Closing, Seller [County] shall be entitled to receive a CLTA owner's title policy (or other similar owner's title policy) in the amount of the Adjusted Price showing title vested in Seller [County] with no Excluded Exceptions shown thereon. The Repurchase Closing shall take place on the Repurchase Closing Date at the offices of the applicable escrow holder or at such other location as may be agreed to by Buyer [City] and Seller [County]. All closing costs for the Repurchase Closing shall be allocated between Buyer [City] and Seller [County] per county custom as reasonably determined by the escrow holder for the transaction. Buyer [City] and Seller [County] shall sign and, if applicable, acknowledge such other documents and instruments as may be reasonably required to cause the Option Property to be conveyed to Seller [County] pursuant to this Paragraph 14(a).

iv. No Extinguishment or Waiver. With respect to any future Proposed Rezoning not covered in a Proposed Change in Use Notice delivered to Seller [County], Seller's Repurchase Option shall not be deemed waived or extinguished if Seller [County] elects not to exercise the Repurchase Option for the Proposed Rezoning actually specified in the applicable Proposed Change in Use Notice. Seller's [County's] repurchase right shall also survive any failure by Buyer [City] to timely provide Seller [County] with a Proposed Change in Use Notice as required under this Paragraph 14a.

b. Right of First Refusal.

i. Buyer [City] agrees that Seller [County] possesses and hereby grants Seller [County] a right of first refusal for a term of ninety-nine (99) years, or as otherwise provided in Paragraph 14.c, to repurchase the Property, or any part thereof, (the "**ROFR**") for the Adjusted Price before, with respect to such Property, or any part thereof, (the "**ROFR Property**") Buyer [City] either (1) sells or conveys fee title to the ROFR Property or (2) enters into a Long Term Lease (as defined below) to any third-party entity for the ROFR Property. No such Long Term Lease or agreement to sell or convey the Property shall be effective until and

unless Seller [County] fails to timely provide a Seller's ROFR Exercise Notice as specified below, and in no event shall any such Long Term Lease or agreement to sell or convey the Property be binding on Seller [County] if Seller's ROFR Exercise Notice is timely delivered and Seller [County] proceeds to repurchase the Property, or the applicable portion thereof, pursuant to said notice.

ii. Prior to offering the ROFR Property for any such sale, conveyance, or Long Term Lease or accepting an unsolicited offer for the same, Buyer [City] shall send Seller [County] a written notice in compliance with the notice provisions of this Agreement including the proposed purchase agreement or lease, or specifying the proposed terms of the sale or lease, as applicable, along with a UCI Value Statement (the "**ROFR Notice**") for the ROFR Property certified, as being accurate by Buyer's [City's] chief financial officer or an outside auditor, and with supporting documents as specified in Paragraph 14a. Seller [County] shall have ninety (90) days after its receipt of the ROFR Notice to exercise its ROFR by providing notice thereof to Buyer [City] ("**Seller's ROFR Exercise Notice**"), which notice shall comply with the notice provisions of this Agreement. The ROFR Property shall be limited to the portion of the Property that is the subject of the proposed sale, conveyance or Long Term Lease.

iii. Notwithstanding the above, if less than the entirety of the Property is proposed to be subject to a Long Term Lease and such portion of the Property is not a separate legal parcel or parcels in compliance with the Map Act (as defined above) then Seller [County] and Buyer [City] shall coordinate to process a lot line adjustment or parcel map creating a separate legal parcel or parcels for the land included within the Long Term Lease and the ROFR Property shall consist of said legal parcel or parcels once such process is completed. Alternatively, Buyer [City] may determine a parcel map to create the ROFR Property may be waived or that the conveyance of the ROFR Property is exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2). If the ROFR Property is created, whether by map, lot line adjustment, waiver, conveyance or exemption, Seller [County] shall be entitled to purchase the ROFR Property but only for an Adjusted Price calculated on said basis. If (x) the application to create or waive a map to cause the ROFR Property to consist entirely of one or more legal parcels in compliance with the Map Act (as defined above) is finally denied by Buyer [City] (or any other applicable governmental authority or body) and (y) Buyer [City] reasonably determines that the conveyance of the ROFR Property is not exempt from compliance with the Map Act pursuant to Government Code Section 66428(a)(2) or any successor or other statute or law, then Buyer [City] shall not proceed with the Long Term Lease.

iv. If the ROFR is timely exercised, subject to the payment of the Adjusted Price, the ROFR Property shall be conveyed to Seller [County] by a grant deed through an escrow, free and clear of Monetary Liens, all as specified in Paragraph 14(a) on the later of the closing date specified in the ROFR Notice or ninety (90) days after the delivery of Seller's ROFR Exercise Notice (but which date shall be subject to the extension to the extent that the ROFR Property does not initially entirely consist of one or more legal parcels to allow the process specified in subparagraph (iii) above to be completed). Closing costs shall be allocated as specified in the ROFR Notice, or if not so specified, as stated in Paragraph 14(a).

v. For the avoidance of doubt, if the ROFR is timely exercised, the purchase price paid for the ROFR Property shall be the Adjusted Price and not any purchase price specified in any applicable purchase or sale agreement or term sheet triggering the ROFR.

c. Term of the Repurchase Option and ROFR. The term of the Repurchase Option and ROFR shall commence as of the Closing of the sale of the Property to Buyer [City] and, unless otherwise agreed by Buyer [City] and Seller [County] in a recorded instrument, shall expire on the earlier of (x) 5:00 p.m. Pacific Time ninety-nine (99) years following said Closing or (y) the maximum period allowed by applicable law. The Repurchase Option and/or ROFR shall automatically expire and be of no effect on the expiration of the term specified in this Paragraph; provided, however, that Seller [County] shall execute such instruments (e.g., a quitclaim deed) as may be reasonably requested by Buyer [City] to confirm the termination of the Repurchase Option and/or ROFR, as applicable, after such occurs.

d. Defined Terms. Defined Terms. The following terms shall have the meanings ascribed to them below for purposes of this Paragraph 14.

i. "**Adjusted Price**" means the Purchase Price paid by Buyer [City] at Closing increased by the change in the Index from the Closing of the sale of the Property to Buyer [City], plus the Unamortized Capital Improvements Value (as defined in Paragraph 14(a)(ii)), which Adjusted Price shall be prorated on a land to land basis (i.e. the ratio of the square footage of the land within the Option Property or ROFR Property, as the case may be, to the square footage of all of the land within the Property) if the Option Property or ROFR Property, as applicable, consists of less than all of the Property.

ii. "**Index**" means the Consumer Price Index for All Urban Consumers-All Items, published monthly by the United States Department of Labor (base year 1982-84=100), or any successor index thereto as hereinafter provided. If the base year of the Index is changed, then all calculations pursuant to this Paragraph 14 that require the use of the Index shall be made by using the appropriate conversion factor published by the Department of Labor (or successor agency) to correlate to the base year of the Index herein specified. If no such conversion factor is published, then the Parties shall in good faith make the necessary calculation to achieve such conversion. Should the Department of Labor discontinue the publication of the Index, then the Parties will adopt a substitute index or procedure, which reasonably reflects and monitors consumer prices.

iii. "**Historical Use**" means each prior use of the Property specified on Exhibit D-1 to this Agreement [**Exhibit D** to this Declaration and Memorandum]; provided, however, in no event shall a Historical Use include a proposed project involving large scale commercial or residential development for a use or uses listed on Exhibit D-1 or otherwise.

iv. "**Long Term Lease**" means any lease, license, occupancy, concession, or similar agreement with a term (including options to extend) in excess of twenty-five (25) years.

v. "**Proposed Rezoning**" means any proposed change in the zoning for the Property or any part thereof, to allow a use that is not a Historical Use of the Property and which such new use would not be allowed under the zoning for the Property as set forth in Calistoga Municipal Code Section 17.23.020 (A)(1), (2), (3) or (4) as of the Effective Date as stated in Exhibit D-2 to this Agreement [**Exhibit E** to this Declaration and Memorandum].

e. Right to Enforce. Buyer [City] stipulates and agrees that Seller [County] may enforce its Repurchase Option and ROFR through specific performance and/or other equitably relief, including through a mandatory or prohibitory injunction, and that the Property, and any part thereof, are of a special and unique character which gives it a peculiar value, and that Seller [County] cannot be reasonably or adequately compensated in damages in an action at law in the event Buyer [City] breaches its obligation to sell the Property, or any part thereof, to Seller [County] pursuant to either Seller's Repurchase Option or ROFR.

f. Buyer Compliance With Surplus Land Act. If Seller [County] seeks to exercise its Repurchase Option and/or ROFR pursuant this Paragraph 14, Buyer [City] shall take all actions necessary to designate the Option Property, or ROFR Property, as applicable, "exempt surplus property" under the SLA (as defined in Paragraph 9(e)) to be transferred back to Seller [County] for its use as a local agency to the full extent that such is legally required to allow such conveyance or transfer to occur. This obligation includes but is not limited to scheduling all public meetings, making all necessary findings, and providing all necessary documentation to the HCD to lawfully transfer the Option Property and/or ROFR Property, as applicable, to Seller [County] under the SLA."

5. Covenants to Run with the Land. The covenants, restrictions, rights, conditions, powers, and other provisions contained or referenced in this Declaration and Memorandum: (a) are made for the mutual benefit of the Parties and their respective successors (by operation of law or otherwise) and assigns and the Parcels; (b) burden the applicable Parcels and are binding upon the Parties and their respective successors (by operation of law or otherwise), assigns, and all other persons or entities acquiring any Parcel, or portion thereof or interest therein; and (c) are intended as and are enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including without limitation, Section 1468 of the Civil Code of the State of California, as the same may be amended from time to time and any successor statutes thereof.

6. Duration / Term of Declaration and Memorandum. The Parties agree that the covenants, restrictions and other provisions set forth in this Declaration and Memorandum will run with the land as specified above and stay in effect for ninety-nine (99) years or such shorter period as specified in Section 4 above / Paragraph 14c of the Purchase Agreement. Upon the termination of this Declaration and Memorandum, County will promptly execute and deliver to City an appropriate release and cancellation instrument acknowledging the expiration or termination of this Declaration and Memorandum, and the provisions thereof. The release and cancellation instrument will be executed in proper form for recordation in the official real estate records of the County.

7. Counterparts. This Declaration and Memorandum may be executed in one or more counterparts, each of which will constitute an original, and all of which together will constitute one and the same instrument.

8. Recordation. The Parties agree that this Declaration and Memorandum shall be recorded in the official real estate records of Napa County.

9. Modification and Termination. This Declaration and Memorandum may not be modified in any respect whatsoever or terminated, in whole or in part, except with the written consent of the City and the County.

10. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given and effective: (i) on the date of delivery if served personally on the Party to whom notice is to be given or, unless otherwise specifically provided or required by this Agreement; (ii) if sent by overnight delivery, such as by Federal Express, on the date said notice or other writing is delivered or on which delivery is refused; (iii) five (5) business days after mailing by first class, registered or certified mail, postage prepaid; or (iv) if by electronic mail, in which case it will be deemed delivered on the date sent, and properly addressed as follows:

CITY:	City of Calistoga 1232 Washington St. Calistoga, CA 94515 ATTN: City Manager Email: lsnideman@ci.calistoga.ca.us
With a copy to:	City Attorney Burke, Williams & Sorensen, LLP 1901 Harrison St., Suite 900 Oakland, CA 94612 ATTN: Michelle Marchetta Kenyon Email: mkenyon@bwslaw.com
COUNTY:	Napa County County Executive Office 1195 Third Street, Suite 319 Napa, California 94559 ATTN: Ryan Alsop Email: ryan.alsop@countyofnapa.org
With a copy to:	Napa County Office of Napa County Counsel 1195 Third Street, Suite 301 ATTN: Sheryl Bratton Email: sheryl.bratton@countyofnapa.org

Any Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

11. No Waiver. The waiver by one Party of the performance of any covenant or condition hereunder shall not invalidate this Declaration and Memorandum, nor shall it be considered to be a waiver by such Party of any other covenant or condition hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any

other act or an identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions of this Declaration and Memorandum for any remedy shall not exclude other remedies unless they are expressly excluded.

12. Attorneys' Fees. If either Party shall bring suit against the other as a result of any alleged breach or failure by the other Party to fulfill or perform any covenants or obligations under this Declaration and Memorandum or in any deed, instrument or other document delivered pursuant hereto, or to seek declaratory relief as to the rights or obligations of either Party, then in such event, the prevailing Party in such action shall be entitled to reasonable attorneys' fees incurred by reason of such action and all costs of suit and those incurred in preparation thereof.

13. Provisions Severable. Each provision of this Declaration and Memorandum shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Declaration and Memorandum be deemed to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Declaration and Memorandum.

14. Governing Laws. This Declaration and Memorandum shall be construed and governed in accordance with the laws of the State of California.

15. Entire Agreement. THIS DECLARATION AND MEMORANDUM, WHICH INCLUDES EACH OF THE EXHIBITS ATTACHED HERETO, ALONG WITH THE PURCHASE AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT OF THIS AGREEMENT AND SUPERSEDES ALL PREVIOUS AGREEMENTS, PROMISES, REPRESENTATIONS, UNDERSTANDINGS AND NEGOTIATIONS, WHETHER WRITTEN OR ORAL, AMONG THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF.

16. Construction. Each Party has participated in the drafting of this Declaration and Memorandum and has had the same reviewed by counsel of its choosing, and, as such, this Declaration and Memorandum shall not be construed against either such Party based on the drafter of any particular provision thereof.

IN WITNESS WHEREOF, the undersigned have executed this Declaration and Memorandum as of the date and year set forth below.

CITY:	**CITY OF CALISTOGA** By: _____ Name: _____ Its: _____

	APPROVED AS TO FORM: City Attorney: By: _____ Name: _____
COUNTY:	**NAPA COUNTY**, a political subdivision of the State of California By: _____ Joelle Gallagher, Chair of the Board of Supervisors Dated: _____, 202__ APPROVED AS TO FORM: Office of County Counsel By: _____ County Counsel APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS: Dated: _____ Processed By: _____ Deputy Clerk of the Board ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

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State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____

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State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

LEGAL DESCRIPTION OF RETAINED PROPERTY

EXHIBIT C

SITE PLAN SHOWING PROPERTY AND RETAINED PROPERTY

[Attached]

EXHIBIT D / EXHIBIT D-1 TO PURCHASE AGREEMENT

HISTORICAL USES

Public fairs and celebrations, recreational, athletic, social, and other civic and community activities and enterprises of a public nature.

The County Fairgrounds has served as a versatile public open space to facilitate the exchange of goods and services; to celebrate agriculture; to host contests, entertainment, recreational and community events and services.

Communication towers.

Health services (e.g. vaccination clinics, cooling center, food distribution).

Collection events for household hazardous waste disposal service.

School events (e.g. graduations, parties, sports contests, classroom instruction, grad night).

Sports (e.g. cub football, adult softball).

Youth summer camps.

Events (e.g. weddings, wedding receptions, family reunions, quinceaneras, camping reunions for travel groups, memorial services, community fundraisers, Christmas bazaars, food festivals, car shows, horse shows, antiques shows, trade shows, auctions, crab feeds, pancake breakfasts, afternoon teas, dinners, home wine and beer tasting events, trade/agricultural/holiday fairs, livestock exhibits, conventions, flea markets, drive-in movies, dances, bingo, fashion shows, BBQs, card parties, music festivals, concerts, art shows, carnivals, circuses, haunted house, cultural celebrations, exhibitions).

Meetings (e.g. Lions, American Legion, Native Sons of the Golden West, Garden Club, Rock Club, Lions, Native Daughters of the Golden West, American Legion, Soroptimist, Women's Golf Club, Men's Golf Club, Sharpsteen Museum, Rotary, Youth-centric organizations, Cub Scouts, Boy Scouts, Cub Football, Calistoga Little League, Calistoga Wildcat Athletic Boosters, Calistoga Music Boosters, 4-H, FAA, Safe Grad Night, Silverado Riders, NARC/Racing groups, Equestrian groups, Calistoga Firefighters, Knights Valley Volunteer Fire Department, Mountain Volunteer Fire Department, Cal Fire/Napa Fire).

Races and/or racetrack.

Golf / golf course.

RV camping / RV park.

Emergency Evacuation Center.

Camps for emergency responders including during wildfires.

Housing for fairground employees

Museum.

Art Center.

Parking lot.

Recycled water distribution.

Public Safety training and recruitment exercises (e.g. helicopter rescue, agility tests, active shooter, fire suppression, forced entry)

Botanical gardens.

EXHIBIT E / EXHIBIT D-2 TO PURCHASE AGREEMENT

MUNICIPAL CODE

17.23.020 Uses allowed.

A. Uses allowed in a P district are as follows, and each shall require a use permit:

1. City and County offices, corporation yards, water and wastewater facilities;
2. Parks, libraries, schools, community centers, museums, fairgrounds, churches;
3. Quasi-public uses such as telephone and electric substations;
4. Fraternal buildings and hospitals.

RECORDING REQUESTED AND WHEN RECORDED RETURN TO:

Napa County
Office of Napa County Counsel
1195 Third Street, Suite 301
Attn: Sheryl Bratton

The affected property is located in the City of Calistoga, County of Napa

No transfer tax is owed as no property is being conveyed or transferred as of the recordation of this instrument; the transferee or grantee is a public entity; and consideration is less than $100. (Rev. & Tax Code Sections 11911 & 11922)

Exempt from recording fees pursuant to Gov. Code Section 27383

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (the "**Agreement**"), dated _____ __, 2024, is entered into by and between CITY OF CALISTOGA, a California general law city ("**Grantor**"), and NAPA COUNTY, a political subdivision of the State of California ("**Grantee**"). Grantor and Grantee may be referred to in this Agreement at times individually as a "**Party**" and collectively as the "**Parties**". The following Recitals are a material part of this Agreement:

RECITALS

A. As of the date of this Agreement, Grantor has purchased certain improved real property located in the City of Calistoga, County of Napa, which real property is more fully described on **Exhibit A** to this Agreement (the "**Property**"). The Property is a part of the land commonly known as the Napa County Fairgrounds and was sold to Grantor pursuant to that Napa County Agreement No. __ Purchase and Sale Agreement and Escrow Instructions, dated ____ 2024, entered into by Grantee, as seller, and Grantor, as buyer (the "**Sales Contract**").

B. Pursuant to the Sales Contract, Grantor has agreed to and wishes to grant, and Grantee desires to receive and accept certain easements over the Property for (i) emergency response purposes and (ii) ingress and egress over and across the Property to accomplish the foregoing purpose, on the terms and conditions stated more fully below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements and covenants are hereby made:

1. PERPETUAL EASEMENTS IN GROSS. Grantor hereby grants to Grantee and its successor(s), the following perpetual easements in gross:

a. a non-exclusive easement on, in, over, and across the Property including any buildings and/or structures located thereon for emergency response purposes by Grantee and other governmental entities conducting the subject emergency response in partnership with Grantee (including federal, state, county, and city emergency personnel) upon the

declaration of any federal, state, county or other local disaster as such may occur from time to time, including, without limitation, the use of all or part of the Property for temporary staging of emergency personnel, vehicles and equipment; shelter and housing for emergency personnel and disaster victims; medical care and first aid; communication facilities; counseling services; financial assistance offices; and meals (the "**Emergency Response Easement**"). Each said use shall be entitled to be continued until a reasonable period after the cessation of the applicable disaster.

b. a non-exclusive easement of ingress and egress for the use of Grantee and other governmental entities conducting the subject emergency response in partnership with Grantee (including federal, state, county, and city emergency personnel) over and across those portions of the Property not improved with buildings or other structures (except to the extent the same are being used as part of the Emergency Response Easement) for vehicular and pedestrian access for the purpose of utilizing the easements set forth in and granted by subsection (a) above.

Said easements may be used by Grantee and other governmental entities conducting the subject emergency response in partnership with Grantee (including federal, state, county, and city emergency personnel) and their respective agents, employees, consultants, contractors, and similar permittees.

2. ALTERATIONS. Grantee and other governmental entities conducting the emergency response in partnership with the Grantee (including federal, state, county, and city emergency personnel) shall have the right, from time to time, to make improvements, modifications, and/or alterations to the Property, which are consistent with, or facilitate the use of, the Emergency Response Easement, provided that any such improvements, modifications, or alterations are of a temporary nature and will be removed, or caused to be removed, by Grantee after they are no longer needed after the cessation of the applicable disaster, and any damage to the Property caused by such improvements, modifications and/or alterations is repaired at no cost to Grantee.

3. CERTAIN RESERVED RIGHTS. Except as otherwise provided in this Agreement, the Grantor reserves the rights to use the Property as long such use does not materially and/or unreasonably interfere with the Grantee's easement rights under this Agreement.

4. INDEMNITY. Except as may be prohibited or limited by applicable law, (i) Grantee will be responsible for all costs required to repair damages to the Property and the improvements thereon caused by Grantee and/or other governmental entities conducting the emergency response in partnership with the Grantee, including all of their respective agents, employees, consultants, contractors, and similar permittees in the exercise of the rights granted under this Agreement, and (ii) Grantee shall indemnify, defend and hold Grantor harmless from and against any and all actual loss, cost, expense (including attorneys' fees), claims, demands, causes of action, liability, and damages arising from third-party claims against Grantor for personal injury or property damage (collectively, "**Claims**") that result from or arise out of the use of the easements granted under this Agreement by Grantee and/or other governmental entities conducting the emergency response in partnership with the Grantee, including all of their respective agents, employees, consultants, contractors, and similar permittees; provided, however, such indemnification and defense obligations shall not extend to any Claims to the extent caused by or arising from Grantor's negligence or willful misconduct, or that of any agent, representative, contractor or employee thereof.

5. INSURANCE. Grantee and other governmental entities conducting the emergency response in partnership with the Grantee shall cause all of their respective third-party agents, consultants, contractors (including subcontractors), and similar permittees who enter upon the Property for purposes of

conducting any emergency response (collectively "**Grantee's Agents**") shall have, and continue to have, the following insurance coverage in full force and effect as a condition of any entry or continued entry onto the Property or any portion thereof, and such insurance shall be maintained in full force and effect throughout the use the easement by the applicable Grantee's Agents:

a. Workers' Compensation Insurance. To the extent required by law, Grantee's Agents shall provide Workers' Compensation, including but not limited to, coverage for workers' compensation and employer's liability, and a waiver of subrogation.

b. Liability Insurance. The following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A VII or better or equivalent self-insurance satisfactory to Grantor's Risk Manager, or by a combination thereof:

   i. General Liability. Commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than One Million Dollars ($1,000,000) combined single limit per occurrence, issued by a company admitted to do business in the State of California, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of the insured party. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

   ii. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with that party's activities under this Agreement of not less than One Million Dollars ($1,000,000) combined single limit per occurrence. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

c. Certificates of Coverage, Waiver of Subrogation and Additional Insureds. Insurance coverages referenced in 5a and 5b, above, shall be evidenced by one or more certificates of coverage and copies of applicable endorsements or, with the consent of Grantor's Risk Manager, demonstrated by other evidence of coverage acceptable to Grantor's Risk Manager, which shall be delivered by Grantee or Grantee's Agents to Grantor prior to each of Grantee's Agents' entry onto the Property, or any one of them (and anytime thereafter as may be reasonably requested by Grantor).

   i. The certificate(s) or other evidence of coverage shall reference this Agreement by its number or title; shall be kept current during the term of this Agreement; shall provide that, if such coverage is reasonably obtainable in the geographic area where the Property is located, Grantor shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

ii. For the commercial general liability insurance coverage referenced in 5bi. and, for the comprehensive automobile liability insurance coverage referenced in 5bii. where the vehicles are covered by a commercial policy rather than a personal policy, Grantee's Agents shall also deliver to Grantor with the evidence of coverage an endorsement from the insurance provider naming Grantor and its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Grantee's Agents shall deliver to Grantor with the evidence of coverage an endorsement waiving subrogation. All liability policies required by this Agreement shall be occurrence based policies.

iii. The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Grantee's Agents not covered by this Easement, then the limits in the applicable certificate relating to the additional insured coverage of Grantor shall pertain only to liability for activities of Grantee's Agents under this Agreement, and that the insurance provided is primary coverage to Grantor with respect to any insurance or self-insurance programs maintained by Grantor.

iv. Upon request by Grantor's Risk Manager, Grantee's Agents shall provide or arrange for the insurer to provide within thirty (30) days of the request, copies of the actual insurance policies or relevant portions thereof.

d. Minimum Limits Not Precluding Additional Coverage. No minimum limits of coverage set forth above shall serve to preclude the application of any coverage in excess of the same, and insurance provided by Grantee's Agents shall be deemed to be primary and non-contributory with any insurance or self-insurance programs maintained by Grantor.

e. Deductibles / Retentions. Any deductibles or self-insured retentions for policies of Grantee's Agents shall be disclosed to Grantor's Risk Manager.

f. Inclusion in Subcontracts. Grantee agrees and acknowledges that the above-referenced liability and Workers' Compensation insurance requirements shall apply to all subcontractors and any other third-party permittee who is involved in providing services under this Agreement involving any entry onto the Property, or any portion thereof, and Grantee shall require compliance of said persons or entities with such insurance requirements set forth in this Section 5.

6. FEE PAYMENTS. To the extent that any governmental entities and/or their respective permittees conducting the emergency response in partnership with Grantee pay any rent or other fees for use of the Property for emergency purposes, all such rent and/or fees shall be paid to the Buyer, not the Seller.

7. TERM OF THE AGREEMENT; RUNNING OF BENEFITS. This Agreement and the term of all easements granted herein shall be perpetual. All provisions of this Agreement including the benefits and burdens, are binding upon and inure to the benefit of the heirs, permitted assigns, successors, licensees, invitees, successors, tenants, and subtenants of the Parties until such time, if any, that both Parties agree in writing to mutually terminate the easements set forth herein.

8. ENFORCEMENT. Either Party shall be entitled to enforce their respective rights under this Agreement through injunctive or equitable relief.

9. NOTICES. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given and effective: (i) on the date of delivery if served personally on the Party to whom notice is to be given or, unless otherwise specifically provided or required by this Agreement or (ii) if sent by overnight delivery, such as by Federal Express, or mailing by first class, registered or certified mail, postage prepaid, on the date said notice or other writing is delivered or on which delivery is refused, and properly addressed as follows:

Grantee's Address:	Napa County County Executive Office 1195 Third Street, Suite 319 Napa, California 94559 Attention: Ryan Alsop / County CEO
With a copy to:	Napa County Office of Napa County Counsel 1195 Third Street, Suite 301 Attention: Sheryl Bratton / County Counsel
Grantor's Address:	City of Calistoga 1232 Washington St. Calistoga, CA 94515 Attention: City Manager
With a copy sent to:	City Attorney Burke, Williams & Sorensen, LLP 1901 Harrison St., Suite 900 Oakland, CA 94612 Attn: Michelle Marchetta Kenyon

Either Party may provide written notice of a change of address in accordance with the above.

10. MISCELLANEOUS.

a. No Assignment. Grantee may not assign the easements and other rights granted to it under this Agreement to any other party or entity.

b. Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto pertaining to its subject matter.

c. Headings. The section headings and captions used in this Agreement are inserted herein for convenience of reference only and are not to be considered in the construction of the provisions hereof and shall not in any way limit the scope or modify the substance or context of any section or paragraph hereof. In the event of any ambiguity in this Agreement, this Agreement shall not be construed against either Party based on the drafter hereof.

d. Counterparts. This Agreement may be executed in any number of counterparts which

together shall constitute the Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

GRANTOR:	**CITY OF CALISTOGA** By: _____ Name: _____ Its: _____
	APPROVED AS TO FORM: City Attorney: By: _____ Name: _____
GRANTEE:	**NAPA COUNTY**, a political subdivision of the State of California By: _____ Joelle Gallagher, Chair of the Board of Supervisors APPROVED AS TO FORM: Office of County Counsel By: _____ County Counsel

	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS: Dated: _____ Processed By: _____ Deputy Clerk of the Board ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To be Inserted]

RECORDING REQUESTED AND WHEN RECORDED RETURN TO:

Napa County
Office of Napa County Counsel
1195 Third Street, Suite 301
Attn: Sheryl Bratton

The affected property is located in the City of Calistoga, County of Napa, and constitutes a portion of Napa County Assessor's Parcel Number (APN) 011-140-055

No transfer tax is owed as no property is being conveyed or transferred as of the recordation of this instrument; the transferee or grantee is a public entity; and consideration is less than $100. (Rev. & Tax Code Sections 11911 & 11922)

Exempt from recording fees pursuant to Gov. Code Section 27383

EASEMENT AGREEMENT REGARDING ADJACENT STORAGE PROPERTY AND ACCESS ROAD

This EASEMENT AGREEMENT REGARDING ADJACENT STORAGE PROPERTY AND ACCESS ROAD (the "**Agreement**"), dated _____ __, 2024, is entered into by and between NAPA COUNTY, a political subdivision of the State of California ("**Grantor**") and CITY OF CALISTOGA, a California general law city ("**Grantee**"). Grantor and Grantee may be referred to in this Agreement at times individually as a "**Party**" and collectively as the "**Parties**". The following Recitals are a material part of this Agreement:

RECITALS

A. As of the date of this Agreement, Grantee has purchased from Grantor certain improved real property located in the City of Calistoga, County of Napa, which real property is more fully described on **Exhibit A** to this Agreement (the "**Property**"). The Property is a part of the land commonly known as the Napa County Fairgrounds and was sold to Grantee pursuant to that Napa County Agreement No. __ Purchase and Sale Agreement and Escrow Instructions, dated ____ 2024, entered into by Grantee, as seller, and Grantor, as buyer (the "**Sales Contract**").

B. Pursuant to the Sales Contract, Grantor retained ownership of an approximate 1.24 acres parcel, which is more fully described on **Exhibit B** to this Agreement (the "**Easement Parcel**"). The Easement Parcel consists of certain land and improvements currently being leased to the Napa County Office of Education ("**NCOE**") (with a street address of 1407 N. Oak Street, Calistoga, CA 94515) (the "**NCOE Leased Premises**"); certain land located to the west of the NCOE Leased Premises that is currently improved with a building used for maintenance and storage purposes and related improvements (the "**Adjacent Storage Property**"), and an access roadway or driveway providing access for the rest of the Easement Parcel to Oak Street (the "**Access Road**"). The Adjacent Storage Property is more fully described on **Exhibit C** to this Agreement and depicted on **Exhibit C-1** hereto. The Access Road is more fully described on **Exhibit D** to this Agreement and depicted on **Exhibit D-1** hereto.

C. Grantee desires to obtain from Grantor and Grantor desires to grant to Grantee (i) a non-exclusive easement to access and use the Adjacent Storage Property for the term specified below and (ii) a permanent non-exclusive easements for (1) ingress and egress purposes over the Access Road and (2) utilities under said road on the terms and conditions stated more fully below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements and covenants are hereby made:

1. ADJACENT STORAGE PROPERTY EASEMENT. Grantor hereby grants to Grantee and its successor(s) a non-exclusive easement over, across, on, and under the Adjacent Storage Property for the term specified below to use the same including the building located thereon for the benefit of the Property in conjunction with the City's ownership and operation thereof (the "**ASP Easement**").

2. ACCESS ROAD EASEMENTS. Grantor hereby grants to Grantee and its successor(s) a non-exclusive, perpetual easement for the following purposes and no others:

a. vehicular and pedestrian access over, on and under the Access Road for ingress and egress to and from the Property and, while the ASP Easement referenced in Section 1 continues in effect, the Adjacent Storage Property, to and from the public roadway currently known as North Oak Street, which use shall be consistent with design and size of said Access Road.

b. the installation, use, maintenance, repair, and replacement of utilities serving the Property, Access Road, and while the ASP Easement referenced in Section 1 continues in effect, the Adjacent Storage Property, all of which shall be installed and maintained underground and below the Access Road. In no event shall any such utilities interfere with any utilities serving the Easement Parcel or any portion thereof.

Said easements may be used by Grantee and its agents, employees, contractors, and other permittees including any tenants and occupants of the Property. Grantee may assign the easement rights specified above to any tenant or occupant of the Property for the term of said tenant's or occupant's lease or other occupancy agreement.

3. MAINTENANCE.

a. At its sole expense, Grantee shall maintain in good condition the Adjacent Storage Property including all improvements thereon while the ASP Easement remains in effect. Grantee shall also be responsible for all costs related to the utility easement rights granted to it under Section 2b above. Grantee shall cause the Access Road to be maintained in good condition (including the paving and repairing, restriping, or resurfacing or replacement of such areas, when reasonably necessary, with the type of material originally installed thereon, or such substitute therefor as shall in all respects be at least equal thereto in quality, appearance and durability) (the "**Access Road Maintenance Work**"). Grantor shall reimburse Grantee for fifty percent (50%) of the costs of the Access Road Maintenance Work (but only for the portion encumbered by the easement set forth in Section 2a above) within thirty (30) days after Grantor's receipt of an invoice for the same along with reasonable supporting documentation, which invoice shall detailed how Grantor's share of such Access Road Maintenance Work was calculated or determined.

b. All maintenance work performed by Grantee pursuant to Section 2a or otherwise within any easements granted by this Agreement shall be undertaken in such a manner as to minimize any interfere with Grantor's and its permittees' use of the Easement Parcel, or any portions thereof, to the extent reasonably possible. Without limiting the above, except

in the event of an emergency, no temporary closure of the Access Road for maintenance or repair purposes shall occur unless such is during non-business hours (i.e., before 8:00 a.m. or after 5:00 p.m., Monday thru Friday, or on Saturday or Sunday) unless some reasonable means of alternative access to the Easement Parcel (outside of the Access Road) from the public street (either directly or indirectly is made available to Grantee and its permittees.

c. Except in the event of an emergency, Grantee shall provide Grantor with at least twenty (20) days' prior notice of any Access Road Maintenance Work or utility work undertaken pursuant to this Agreement.

4. ALTERATIONS. Grantee shall not perform or permit to be performed any alterations or other changes to the Adjacent Storage Property and/or Access Road without Grantor's written approval not to be unreasonably withheld, conditioned or delayed. In no event shall any alterations preclude or interfere in any material manner with Grantor's or its permittees' use of the Easement Parcel, or any portion thereof. Nothing set forth above, however, shall preclude or prevent Grantee from constructing and maintaining a fence along the boundary of the Property and the Easement Parcel. If such a fence is installed, then Grantor shall reimburse Grantee for fifty percent (50%) of the actual costs incurred for the fencing and its installation. Said reimbursement shall be made within thirty (30) days after Grantee's receipt of an invoice detailing such costs, which invoice shall include proof of payment by Grantee and reasonable supporting documentation.

5. CERTAIN RESERVED RIGHTS. Except as otherwise provided in this Agreement, the Grantor reserves the rights to use those portions of the Easement Parcel burdened by the easements specified above as long such use does not materially and/or unreasonably interfere with the Grantee's easement rights under this Agreement.

6. INDEMNITY. Except as may be prohibited or limited by applicable law, (i) Grantee will be responsible for all costs required to repair damages to the Easement Parcel and the improvements thereon caused by Grantee and/or its permittees use of any of the easements granted under this Agreement, and (ii) Grantee shall indemnify, defend and hold Grantor harmless from and against any and all actual loss, cost, expense (including attorneys' fees), claims, demands, causes of action, liability, and damages arising from third-party claims against Grantor for personal injury or property damage (collectively, "**Claims**") that result from or arise out of the use of the easements granted under this Agreement by Grantee and/or its permittees; provided, however, such indemnification and defense obligations shall not extend to any Claims to the extent caused by or arising from Grantor's negligence or willful misconduct, or that of any agent, representative, contractor, employee or other permittee thereof.

7. INSURANCE. Grantee shall cause all of its respective third-party agents, consultants, contractors (including subcontractors) (each a "**Grantee's Agent**") who enter upon the Easement Parcel to have, the following insurance coverage in full force and effect as a condition of any entry or continued entry onto the Easement Parcel or any portion thereof, and such insurance shall be maintained in full force and effect throughout the use the easement by the applicable Grantee's Agent:

a. Workers' Compensation Insurance. To the extent required by law, Grantee's Agents shall provide Workers' Compensation, including but not limited to, coverage for workers' compensation and employer's liability, and a waiver of subrogation.

b. Liability Insurance. The following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A VII or better or equivalent self-insurance satisfactory to Grantor's risk manager, or by a combination thereof:

i. General Liability. Commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than One Million Dollars ($1,000,000) combined single limit per occurrence, issued by a company admitted to do business in the State of California, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of the insured party. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

ii. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with that party's activities under this Agreement of not less than One Million Dollars ($1,000,000) combined single limit per occurrence. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

c. Certificates of Coverage, Waiver of Subrogation and Additional Insureds. Insurance coverages referenced in 7a and 7b, above shall be evidenced by one or more certificates of coverage and copies of applicable endorsements or, with the consent of Grantor's Risk Manager, demonstrated by other evidence of coverage acceptable to Grantor's Risk Manager, which shall be delivered by Grantee or Grantee's Agents to Grantor prior to each of Grantee's Agents' entry onto the Property, or any one of them (and anytime thereafter as may be reasonably requested by Grantor).

i. The certificate(s) or other evidence of coverage shall reference this Agreement by its number or title; shall be kept current during the term of this Agreement; shall provide that, if such coverage is reasonably obtainable in the geographic area where the Property is located, Grantor shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of a premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

ii. For the commercial general liability insurance coverage referenced in 7bi and, for the comprehensive automobile liability insurance coverage referenced in 7bii. where the vehicles are covered by a commercial policy rather than a personal policy, Grantee's Agents shall also deliver to Grantor with the evidence of coverage an endorsement from the insurance provider naming Grantor and its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Grantee's Agents shall deliver to Grantor with the evidence of coverage an endorsement waiving subrogation. All liability policies required by this Agreement shall be occurrence based policies.

iii. The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Grantee's Agents not covered by this Easement, then the limits in the applicable certificate relating to the additional insured coverage of Grantor shall pertain only to liability for activities of Grantee's Agents under this Agreement, and that the insurance provided is primary coverage to Grantor with respect to any insurance or self-insurance programs maintained by Grantor.

iv. Upon request by Grantor's Risk Manager, Grantee's Agents shall provide or arrange for the insurer to provide within thirty (30) days of the request, copies of the actual insurance policies or relevant portions thereof.

d. Minimum Limits Not Precluding Additional Coverage. No minimum limits of coverage set forth above shall serve to preclude the application of any coverage in excess of the same, and insurance provided by Grantee's Agents shall be deemed to be primary and non-contributory with any insurance or self-insurance programs maintained by Grantor.

e. Deductibles / Retentions. Any deductibles or self-insured retentions for policies of Grantee's Agents shall be disclosed to Grantor's Risk Manager.

f. Inclusion in Subcontracts. Grantee agrees and acknowledges that the above-referenced liability and Workers' Compensation insurance requirements shall apply to all subcontractors and any other third-party permittee who is involved in providing services under this Agreement involving any entry onto the Property, or any portion thereof, and Grantee shall require compliance of said persons or entities with such insurance requirements set forth in this Section 7.

8. TERM OF THE AGREEMENT; RUNNING OF BENEFITS. This Agreement and the term of all easements granted herein shall be perpetual except as follows: The ASP Easement may be terminated by Grantor providing notice of such termination to Grantee. No such termination notice shall be effective, however, unless Grantee is given at least nine (9) months prior notice of the specified termination date. The easements and covenants granted and given under this Agreement shall run with the land for the benefit of the Property and to the extent applicable the Easement Parcel and burden the Easement Property and to the extent applicable the Property. This Agreement shall be binding upon and inure to the benefit of Grantee and any successor owner of any portion of the Property, and shall be binding upon and inure to the benefit of Grantor and any successor owner of the Easement Parcel or any portion thereof.

9. ENFORCEMENT. Either Party shall be entitled to enforce their respective rights under this Agreement through injunctive or equitable relief.

10. NOTICES. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given and effective: (i) on the date of delivery if served personally on the Party to whom notice is to be given or, unless otherwise specifically provided or required by this Agreement or (ii) if sent by overnight delivery, such as by Federal Express, or mailing by first class, registered or certified mail, postage prepaid, on the date said notice or other writing is delivered or on which delivery is refused, and properly addressed as follows:

Grantor's Address: Napa County
County Executive Office
1195 Third Street, Suite 319

	Napa, California 94559 Attention: Ryan Alsop / County CEO
With a copy to:	Napa County Office of Napa County Counsel 1195 Third Street, Suite 301 Attention: Sheryl Bratton / County Counsel
Grantee's Address:	City of Calistoga 1232 Washington St. Calistoga, CA 94515 Attention: City Manager
With a copy sent to:	City Attorney Burke, Williams & Sorensen, LLP 1901 Harrison St., Suite 900 Oakland, CA 94612 Attn: Michelle Marchetta Kenyon

Either Party may provide written notice of a change of address in accordance with the above.

11. MISCELLANEOUS.

a. Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto pertaining to its subject matter.

b. Headings. The section headings and captions used in this Agreement are inserted herein for convenience of reference only and are not to be considered in the construction of the provisions hereof and shall not in any way limit the scope or modify the substance or context of any section or paragraph hereof. In the event of any ambiguity in this Agreement, this Agreement shall not be construed against either Party based on the drafter hereof.

c. Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

GRANTEE:	**CITY OF CALISTOGA** By: _____ Name: _____ Its: _____
	APPROVED AS TO FORM: City Attorney: By: _____ Name: _____
GRANTOR:	**NAPA COUNTY**, a political subdivision of the State of California By: _____ Joelle Gallagher, Chair of the Board of Supervisors APPROVED AS TO FORM: Office of County Counsel By: _____ County Counsel

	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS: Dated: _____ Processed By: _____ Deputy Clerk of the Board ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By:_____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[To be Inserted]

EXHIBIT B

LEGAL DESCRIPTION OF THE EASEMENT PARCEL

[To be Inserted]

EXHIBIT C

LEGAL DESCRIPTION OF ADJACENT STORAGE PROPERTY

[To be Inserted]

EXHIBIT C-1

DEPICTION OF ADJACENT STORAGE PROPERTY

[To be Inserted]

EXHIBIT D

LEGAL DESCRIPTION OF ACCESS ROAD

[To be Inserted]

EXHIBIT D-1

DEPICTION OF ACCESS ROAD

[To be Inserted]

A Tradition of Stewardship
A Commitment to Service

County Executive Office

1195 Third Street
Suite 310
Napa, CA 94559
www.countyofnapa.org

Main: (707) 253-4421

Ryan J. Alsop
County Executive Officer

MEMORANDUM

To:	Board of Supervisors	From:	Ryan J. Alsop, County Executive Officer
Date:	January 22, 2023	Re:	Item No. 11C– Proposed Sale of Calistoga Fairgrounds Property

Please see the attached minor revisions to the agreements that are included with the agenda materials:

- Agreement Revisions (Purchase and Sale Agreement)
  - Section 13(e) (insurance)

- Exhibit D Revisions (Declaration of Covenants and Restrictions)
  - Recitals Paragraph B

- Exhibit D-3 Revisions (County Easement Agreement for Emergency Use)
  - Section 6 (fee payments)
  - Section 9 (notices)

- Easement Revisions (City Easement Agreement for Access and Adjacent Storage Area)
  - Section 1 (storage easement)
  - Section 2 (access easement)
  - Section 10 (notices)

Agreement Revisions (Purchase and Sale Agreement)

[See attached revisions to Section 13(e)]

c. Certificates of Coverage, Waiver of Subrogation and Additional Insureds. Insurance coverages referenced in 13.a and 13.b, above, shall be evidenced by one or more certificates of coverage and copies of applicable endorsements or, with the consent of Seller's Risk Manager, demonstrated by other evidence of coverage acceptable to Seller's Risk Manager, which shall be delivered by Buyer to Seller prior to each of Buyer and its Agents' entry onto the Property, or any one of them (and anytime thereafter as may be reasonably requested by Seller).

i. The certificate(s) or other evidence of coverage shall reference this Agreement by its number or title and department; shall be kept current during the term of this Agreement; shall provide that, if such coverage is reasonably obtainable in the geographic area where the Property is located, Seller shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

ii. For the commercial general liability insurance coverage referenced in 13.b.i. and, for the comprehensive automobile liability insurance coverage referenced in 13.b.ii. where the vehicles are covered by a commercial policy rather than a personal policy, Buyer shall also deliver to Seller with the evidence of coverage an endorsement from the insurance provider naming Seller and its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Buyer shall deliver to Seller with the evidence of coverage an endorsement waiving subrogation. All liability policies required by this Agreement shall be occurrence based policies.

iii. The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Buyer not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of Seller shall pertain only to liability for activities of Buyer under this Agreement, and that the insurance provided is primary coverage to Seller with respect to any insurance or self-insurance programs maintained by Seller.

d. Upon request by Seller's Risk Manager, Buyer shall provide or arrange for the insurer to provide within thirty (30) days of the request, copies of the actual insurance policies or relevant portions thereof.

e. Minimum Limits Not Precluding Additional Coverage. No minimum limits of coverage set forth above shall serve to preclude the application of any coverage in excess of the

same, and insurance provided by Buyer shall be deemed to be primary and non-contributory with any insurance or self-insurance programs maintained by Seller.

~~e.~~f. Deductibles/Retentions. Any deductibles or self-insured retentions shall be disclosed to Seller's Risk Manager.

~~f.~~g. Inclusion in Subcontracts. Buyer agrees and acknowledges that the above-referenced liability and Workers' Compensation insurance requirements shall apply to all subcontractors and any other entity or person who is involved in providing services under this Agreement involving any entry onto the Property, or any portion thereof, and Buyer shall require compliance of said persons or entities with such insurance requirements set forth in this Paragraph 13.

14. REPURCHASE RIGHT AND RIGHT OF FIRST REFUSAL.

a. Repurchase Right. Buyer agrees that Seller possesses and hereby grants Seller the right and option to repurchase the Property, or applicable portions thereof, from Seller for a period of ninety-nine (99) years or as otherwise provided in Paragraph 14.c, for the Adjusted Price (as defined below) on and subject to the terms and conditions set forth below (the "**Repurchase Option**"):

i. Right to Exercise the Repurchase Option. Seller may exercise its Repurchase Option if the Property, or any portion thereof, is subject to a Proposed Rezoning (as defined below) except as follows: If Buyer (or any other applicable governmental authority or body) finally denies (i.e. the denial is not subject to any right appeal or legal challenge) the Proposed Rezoning before the Repurchase Closing occurs, then the Repurchase Option for the specific Proposed Rezoning whether or not previously exercised by Seller shall become null and void (but not Seller's right to exercise its Repurchase Option for other Proposed Rezonings). Unless Seller agrees in its sole and absolute discretion otherwise in writing, Buyer shall not hold a vote on or otherwise approve of any Proposed Rezoning until the time for Seller to deliver Seller's Election Notice has expired.

ii. Exercise of Repurchase Option.

1. Before any Proposed Rezoning of all or part of the Property occurs, Buyer shall send Seller a written notice in compliance with the notice provisions of this Agreement specifying the Proposed Rezoning and what parts of the Property would be affected thereby (the "**Option Property**"), which notice shall also include the reasons why Buyer wishes to permit or consider the Proposed Rezoning and be accompanied by a reconciled statement (the "**UCI Value Statement**") certified as being accurate by Buyer's chief financial officer or an outside auditor of the monetary value of all unamortized capital improvements (amortized in accordance with IRS guidelines), if any, made by Buyer (through the use of the Buyer's general funds) on the Option Property ("**Unamortized Capital**

Exhibit D Revisions (Declaration of Covenants and Restrictions)

[See attached revisions to Recitals Paragraph B]

RECORDING REQUESTED AND WHEN RECORDED RETURN TO:

Napa County
Office of Napa County Counsel
1195 Third Street, Suite 301
Attn: Sheryl Bratton

No transfer tax is owed as no property is being conveyed or transferred as of the recordation of this instrument; the transferee or grantee is a public entity; and consideration is less than $100. (Rev. & Tax Code Sections 11911 & 11922)

Exempt from recording fees pursuant to Gov. Code Section 27383

DECLARATION OF COVENANTS AND RESTRICTIONS AND MEMORANDUM OF AGREEMENT RE REPURCHASE OPTION AND RIGHT OF FIRST REFUSAL

THIS DECLARATION OF COVENANTS AND RESTRICTIONS AND MEMORANDUM OF AGREEMENT RE REPURCHASE OPTION AND RIGHT OF FIRST REFUSAL (this "**Declaration and Memorandum**") is entered into as of this _____ day of _____, 202__ (the "**Effective Date**"), by and between COUNTY OF NAPA, a political subdivision of the State of California (the "**County**"), and CITY OF CALISTOGA, a California general law city (the "**City**"). County and City are sometimes individually referred to herein as "**Party**" and together referred to as "**Parties**".

RECITALS

A. County was the owner of approximately +/- 70.6-acres of real property as well as the buildings and other improvements located thereon in the City of Calistoga, County of Napa, commonly known as and used as the Napa County Fairgrounds (collectively, the "**Fairgrounds**").

B. On or about the Effective Date, pursuant to that Napa County Agreement No. _____, Purchase and Sale Agreement and Escrow ~~Instruction~~Instructions, between County, as Seller, and City, as Buyer (the "**Purchase Agreement**"), County sold and transferred the entirety of the Fairgrounds to the City (the "**Property**"), excluding an ~~approximate~~ approximately +/- 1.24 acre parcel, the ownership of which was retained by the County (the "**Retained Land**"). The Property is more fully described on **Exhibit A** to this Declaration and Memorandum, and the Retained Land is more fully described on **Exhibit B** to this Declaration and Memorandum. The approximate locations of the Property and the Retained Land are designated on **Exhibit C** hereto. The Property and the Retained Land are sometimes individually referred to herein as a "**Parcel**" and collectively as the "**Parcels**".

C. As set forth in the Purchase Agreement, County sold the Property to City at a substantial discount below its fair market value in order to have City own and operate the Property for public purposes consistent with historical uses, as defined herein, of the Fairgrounds for the benefit of the community, all of which City has agreed to do.

D. One of the purposes of this Declaration and Memorandum is to provide record notice of certain provisions of the Purchase Agreement that survived the closing thereunder.

NOW, THEREFORE, for the purposes set forth above and as otherwise set forth below, or good and valuable consideration, the Parties declare that the Parcels shall hereafter be held, used, operated,

Exhibit D-3 Revisions (County Easement Agreement for Emergency Use)

[See attached revisions to Section 6 (fee payments) and Section 9 (notices)]

ii. For the commercial general liability insurance coverage referenced in 5bi. and, for the comprehensive automobile liability insurance coverage referenced in 5bii. where the vehicles are covered by a commercial policy rather than a personal policy, Grantee's Agents shall also deliver to Grantor with the evidence of coverage an endorsement from the insurance provider naming Grantor and its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Grantee's Agents shall deliver to Grantor with the evidence of coverage an endorsement waiving subrogation. All liability policies required by this Agreement shall be occurrence based policies.

iii. The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Grantee's Agents not covered by this Easement, then the limits in the applicable certificate relating to the additional insured coverage of Grantor shall pertain only to liability for activities of Grantee's Agents under this Agreement, and that the insurance provided is primary coverage to Grantor with respect to any insurance or self-insurance programs maintained by Grantor.

iv. Upon request by Grantor's Risk Manager, Grantee's Agents shall provide or arrange for the insurer to provide within thirty (30) days of the request, copies of the actual insurance policies or relevant portions thereof.

d. Minimum Limits Not Precluding Additional Coverage. No minimum limits of coverage set forth above shall serve to preclude the application of any coverage in excess of the same, and insurance provided by Grantee's Agents shall be deemed to be primary and non-contributory with any insurance or self-insurance programs maintained by Grantor.

e. Deductibles / Retentions. Any deductibles or self-insured retentions for policies of Grantee's Agents shall be disclosed to Grantor's Risk Manager.

f. Inclusion in Subcontracts. Grantee agrees and acknowledges that the above-referenced liability and Workers' Compensation insurance requirements shall apply to all subcontractors and any other third-party permittee who is involved in providing services under this Agreement involving any entry onto the Property, or any portion thereof, and Grantee shall require compliance of said persons or entities with such insurance requirements set forth in this Section 5.

6. FEE PAYMENTS. To the extent that any governmental entities and/or their respective permittees conducting the emergency response in partnership with Grantee pay any rent or other fees for use of the Property for emergency purposes, all such rent and/or fees shall be paid to the ~~Buyer~~Grantor, not the ~~Seller~~Grantee.

7. TERM OF THE AGREEMENT; RUNNING OF BENEFITS. This Agreement and the term of all easements granted herein shall be perpetual. All provisions of this Agreement including the benefits and burdens, are binding upon and inure to the benefit of the heirs, permitted assigns, successors, licensees, invitees, successors, tenants, and subtenants of the Parties until such time, if any, that both Parties agree in writing to mutually terminate the easements set forth herein.

8. ENFORCEMENT. Either Party shall be entitled to enforce their respective rights under this Agreement through injunctive or equitable relief.

9. NOTICES. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given and effective: (i) on the date of delivery if served personally on the Party to whom notice is to be given or, unless otherwise specifically provided or required by this Agreement ~~or (~~;(ii) if sent by overnight delivery, such as by Federal Express, or on which delivery is refused; (iii) five (5) business days after mailing by first class, registered or certified mail, postage prepaid, ; or (iv) by electronic mail, on the date ~~said notice or other writing is delivered or on which delivery is refused,~~sent and properly addressed as follows:

Grantee's Address:	Napa County County Executive Office 1195 Third Street, Suite 319 Napa, California 94559 Attention: Ryan Alsop / County CEO
With a copy to:	Napa County Office of Napa County Counsel 1195 Third Street, Suite 301 Attention: Sheryl Bratton / County Counsel
Grantor's Address:	City of Calistoga 1232 Washington St. Calistoga, CA 94515 Attention: City Manager
With a copy sent to:	City Attorney Burke, Williams & Sorensen, LLP 1901 Harrison St., Suite 900 Oakland, CA 94612 Attn: Michelle Marchetta Kenyon

Either Party may provide written notice of a change of address in accordance with the above.

10. MISCELLANEOUS.

a. No Assignment. Grantee may not assign the easements and other rights granted to it under this Agreement to any other party or entity.

b. Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto pertaining to its subject matter.

c. Headings. The section headings and captions used in this Agreement are inserted herein for convenience of reference only and are not to be considered in the construction of the provisions hereof and shall not in any way limit the scope or modify the substance or context of any section or paragraph hereof. In the event of any ambiguity in this Agreement, this Agreement shall not be construed against either Party based on the drafter hereof.

d. Counterparts. This Agreement may be executed in any number of counterparts which

Easement Revisions (City Easement Agreement for Access and Adjacent Storage Area)

[See attached revisions to Sections 1 (storage easement), 2 (access easement), and 10 (notices)]

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following grants, agreements and covenants are hereby made:

1. ADJACENT STORAGE PROPERTY EASEMENT. Grantor hereby grants to Grantee and its successor(s) and assigns a non-exclusive easement over, across, on, and under the Adjacent Storage Property for the term specified below to use the same including the building located thereon for the benefit of the Property in conjunction with the City's ownership and operation thereof (the "**ASP Easement**").

2. ACCESS ROAD EASEMENTS. Grantor hereby grants to Grantee and its successor(s) and assigns a non-exclusive, perpetual easement for the following purposes and no others:

a. vehicular and pedestrian access over, on and under the Access Road for ingress and egress to and from the Property and, while the ASP Easement referenced in Section 1 continues in effect, the Adjacent Storage Property, to and from the public roadway currently known as North Oak Street, which use shall be consistent with design and size of said Access Road.

b. the installation, use, maintenance, repair, and replacement of utilities serving the Property, Access Road, and while the ASP Easement referenced in Section 1 continues in effect, the Adjacent Storage Property, all of which shall be installed and maintained underground and below the Access Road. In no event shall any such utilities interfere with any utilities serving the Easement Parcel or any portion thereof.

Said easements may be used by Grantee and its agents, employees, contractors, and other permittees including any tenants and occupants of the Property. Grantee may assign the easement rights specified above to any tenant or occupant of the Property for the term of said tenant's or occupant's lease or other occupancy agreement as well as to successor owners of all or part of the Property.

3. MAINTENANCE.

a. At its sole expense, Grantee shall maintain in good condition the Adjacent Storage Property including all improvements thereon while the ASP Easement remains in effect. Grantee shall also be responsible for all costs related to the utility easement rights granted to it under Section 2b above. Grantee shall cause the Access Road to be maintained in good condition (including the paving and repairing, restriping, or resurfacing or replacement of such areas, when reasonably necessary, with the type of material originally installed thereon, or such substitute therefor as shall in all respects be at least equal thereto in quality, appearance and durability) (the "**Access Road Maintenance Work**"). Grantor shall reimburse Grantee for fifty percent (50%) of the costs of the Access Road Maintenance Work (but only for the portion encumbered by the easement set forth in Section 2a above) within thirty (30) days after Grantor's receipt of an invoice for the same along with reasonable supporting documentation, which invoice shall detailed how Grantor's share of such Access Road Maintenance Work was calculated or determined.

b. All maintenance work performed by Grantee pursuant to Section 2a or otherwise within any easements granted by this Agreement shall be undertaken in such a manner as to minimize any interfere with Grantor's and its permittees' use of the Easement Parcel, or any portions thereof, to the extent reasonably possible. Without limiting the above, except

iii. The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Grantee's Agents not covered by this Easement, then the limits in the applicable certificate relating to the additional insured coverage of Grantor shall pertain only to liability for activities of Grantee's Agents under this Agreement, and that the insurance provided is primary coverage to Grantor with respect to any insurance or self-insurance programs maintained by Grantor.

iv. Upon request by Grantor's Risk Manager, Grantee's Agents shall provide or arrange for the insurer to provide within thirty (30) days of the request, copies of the actual insurance policies or relevant portions thereof.

d. Minimum Limits Not Precluding Additional Coverage. No minimum limits of coverage set forth above shall serve to preclude the application of any coverage in excess of the same, and insurance provided by Grantee's Agents shall be deemed to be primary and non-contributory with any insurance or self-insurance programs maintained by Grantor.

e. Deductibles / Retentions. Any deductibles or self-insured retentions for policies of Grantee's Agents shall be disclosed to Grantor's Risk Manager.

f. Inclusion in Subcontracts. Grantee agrees and acknowledges that the above-referenced liability and Workers' Compensation insurance requirements shall apply to all subcontractors and any other third-party permittee who is involved in providing services under this Agreement involving any entry onto the Property, or any portion thereof, and Grantee shall require compliance of said persons or entities with such insurance requirements set forth in this Section 7.

8. TERM OF THE AGREEMENT; RUNNING OF BENEFITS. This Agreement and the term of all easements granted herein shall be perpetual except as follows: The ASP Easement may be terminated by Grantor providing notice of such termination to Grantee. No such termination notice shall be effective, however, unless Grantee is given at least nine (9) months prior notice of the specified termination date. The easements and covenants granted and given under this Agreement shall run with the land for the benefit of the Property and to the extent applicable the Easement Parcel and burden the Easement Property and to the extent applicable the Property. This Agreement shall be binding upon and inure to the benefit of Grantee and any successor owner of any portion of the Property, and shall be binding upon and inure to the benefit of Grantor and any successor owner of the Easement Parcel or any portion thereof.

9. ENFORCEMENT. Either Party shall be entitled to enforce their respective rights under this Agreement through injunctive or equitable relief.

10. NOTICES. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed given and effective: (i) on the date of delivery if served personally on the Party to whom notice is to be given or, unless otherwise specifically provided or required by this Agreement ~~or~~; (ii) if sent by overnight delivery, such as by Federal Express, or on which delivery is refused; (iii) five (5) business days after mailing by first class, registered or certified mail, postage prepaid; or (iv) by electronic mail, on the date ~~said notice or other writing is delivered or on which delivery is refused~~sent, and properly addressed as follows:

Grantor's Address: Napa County
County Executive Office

Napa County

Board Agenda Letter

1195 THIRD STREET
SUITE 310
NAPA, CA 94559
www.napacounty.gov

Main: (707) 253-4580

Board of Supervisors | **Agenda Date:** 1/23/2024 | **File ID #:** 24-111

TO: Board of Supervisors

FROM: Ryan J. Alsop, County Executive Officer

REPORT BY: Christine Briceño, Director of Human Resources

SUBJECT: PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE (Government Code Section 54957)

RECOMMENDATION

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE (Government Code Section 54957)