

Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559



Agenda

Final - Supplemental

Tuesday, October 19, 2021

9:00 AM

**Board of Supervisors Chambers
1195 Third Street, Third Floor**

Board of Supervisors

Brad Wagenknecht, District 1

Ryan Gregory, District 2

Diane Dillon, District 3

Alfredo Pedroza, District 4

Belia Ramos, District 5

Minh C. Tran, County Executive Officer

Thomas C. Zeleny, Interim County Counsel

Neha Hoskins, Clerk of the Board

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 item on the **CONSENT CALENDAR** will be discussed separately at the request of any person. **CONSENT CALENDAR** items are usually approved with a single motion.

SET MATTERS - PUBLIC HEARINGS - These items are noticed hearings, work sessions, and items with a previously set time.

ADMINISTRATIVE ITEMS - These items include significant policy and administrative actions and are classified by program areas. Immediately after approval of the **CONSENT CALENDAR**, if the time for hearing **SET MATTERS** has not arrived, **ADMINISTRATIVE ITEMS** will be considered.

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 at the public meeting if prepared by the members of the Board or County staff and after the public meeting if prepared by some other person. Availability of materials related to agenda items for public inspection does not include materials which are exempt from public disclosure under the California Government Code.

This is a simultaneous meeting of the Board of Supervisors of Napa County, the Napa County Public Improvement Corporation, the Silverado Community Services District, the Monticello Public Cemetery District, the In-Home Support Services Public Authority of Napa County, the Lake Berryessa Resort Improvement District, the Napa Berryessa Resort Improvement District, the Napa County Housing Authority and the Napa County Groundwater Sustainability Agency. The five District Supervisors also serve as the Board of Directors for each of the aforementioned entities.

ANY MEMBER OF THE AUDIENCE DESIRING TO ADDRESS THE BOARD ON A MATTER ON THE AGENDA please proceed to the rostrum 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.

AGENDA AVAILABLE ONLINE AT www.countyofnapa.org

How to Watch or Listen to the Napa County Board of Supervisors Meetings****FACE MASKS MUST BE WORN AT ALL TIMES WHILE IN THE BOARD CHAMBERS.****

The Napa County Board of Supervisors will continue to meet pursuant to the adopted 2021 calendar available at the following link:

www.napa.legistar.com

The Board realizes that not all County residents have the same ways to stay engaged, so several alternatives are offered. Please watch or listen to the Board of Supervisors meeting in one of the following ways:

1. Watch on your TV - Napa Valley TV Channel 28 (programming subject to local pre-emption rules and schedules).
2. Listen on your cell phone via Zoom at 1-669-900-6833 then enter Meeting ID 842-343-169 once you have joined the meeting.
3. Watch via the Internet – view the Live Stream
 - a. via Zoom at the following link: <https://www.zoom.us/join> then enter Meeting ID 842-343-169.
 - b. via Granicus by clicking on the following link: http://napa.granicus.com/ViewPublisher.php?view_id=2
4. You may submit public comment for any item that appears on the agenda or general public comment for any item or issue that does not appear on the agenda by emailing your comment to the following email address: publiccomment@countyofnapa.org. EMAILS WILL NOT BE READ ALOUD.

Via telephone: please call the Board of Supervisors Public Comment Line at (707) 299-1776.

Please mute all audio devices and do not use the speakerphone to prevent echoing.

Please provide your name and the agenda item on which you are commenting. Calls will be placed on hold and heard in the order received. The above-identified measures comply with all legal requirements for participation and public comment, including those imposed by the Ralph M. Brown Act and Executive Order, as amended by AB 361.

For more information, please call at (707) 253-4421 or email publiccomment@countyofnapa.org.

1. CALL TO ORDER; ROLL CALL**2. PLEDGE OF ALLEGIANCE****3. APPROVAL OF MINUTES****4. PRESENTATIONS AND COMMENDATIONS**

A. Director of Human Resources to introduce new County employees. [21-964](#)

B. Presentation of a proclamation to Jon Gjestvang, Chief Information Officer, declaring October 2021 as “Cybersecurity Awareness Month” in Napa County. [21-1061](#)

Attachments: [Proclamation](#)

5. DEPARTMENT HEAD REPORTS AND ANNOUNCEMENTS**6. CONSENT ITEMS - SPECIAL DISTRICTS****Napa County Groundwater Sustainability Agency**

A. Director of Planning Building and Environmental Services requests adoption of a resolution amending the Bylaws of the Groundwater Sustainability Plan Advisory Committee (GSPAC) to extend the deadline for recommending the draft Groundwater Sustainability Plan (GSP) from November 1, 2021, to November 19, 2021. [21-1076](#)

Attachments: [Resolution](#)

7. CONSENT ITEMS**County Departments****County Executive Office**

A. County Executive Officer requests approval of a Budget Transfer increasing appropriations in the Special Revenue Fund Citizens’ Option for Public Safety (Fund 2500 Organization 1020086) in the amount of \$248,595 with offsetting revenue from 2011 Realignment, Citizens’ Option for Public Safety, which will be transferred as needed to the Sheriff, District Attorney and Department of Corrections for operations. [21-1064](#)

County Fire Department

- B. County Fire Chief requests approval of and authorization for the Chair to sign Agreement No. 220157B with Air Instrumentation for a maximum of \$19,500 for the term of September 1, 2021, through June 30, 2022, with an automatic two-year renewal provision to supply, maintain, and service hazardous materials equipment for the Napa Interagency Rescue Team. [21-961](#)

Attachments: [Agreement](#)

District Attorney

- C. District Attorney and Auditor-Controller request the Board accept and instruct the Clerk of the Board to file the Audit Reports for the Napa County District Attorney's Office Automobile Insurance Fraud and Workers' Compensation Insurance Fraud Grant Programs awarded by the California Department of Insurance for the fiscal year ended June 30, 2021. [21-973](#)

Attachments: [Automobile Insurance Report](#)
[Workers' Compensation Report](#)

- D. District Attorney requests approval of and authorization for the Chair to sign a Certification of Assurance of Compliance document that authorizes the District Attorney to apply for and sign grant Subaward documents with the California Office of Emergency Services for the Unserved/Underserved Victim Advocacy and Outreach (UV) Program in the anticipated amount of \$360,920 for the term of January 1, 2022 through December 31, 2022. [21-976](#)

Attachments: [Elder 2022 VOCA Grant](#)
[Latino 2022 VOCA Grant](#)

Health and Human Services Agency

- E. Director of Health and Human Services requests approval of and authorization for the Chair to sign Renewal Agreement No. 8549 with the California Department of Social Services (CDSS) for the term July 1, 2021 through June 30, 2024 for the purpose of continuing the responsibilities of the CDSS and the County in the provision and receipt of certain services, including legal consultation and legal representation in administrative action appeals associated with the Resource Family Approval (RFA) program. [21-852](#)

Attachments: [Agreement](#)

- F.** Director of Health and Human Services requests the following: [21-895](#)
1. Declare capital asset property as surplus and no longer required for public use; and
 2. Authorize removal of capital assets from the Health and Human Services Agency capital asset inventory.

- G.** Director of Health and Human Services requests approval of and authorization for the Chair to sign Agreement No. 220137B with On the Move, Inc. for a maximum of \$26,400 for the term October 19, 2021 through June 30, 2023 for the transitional housing program. [21-908](#)

Attachments: [Agreement](#)

- H.** Director of Health and Human Services requests approval of and authorization for the Chair to sign Agreement No. 220136B with FirstWatch Solutions, Inc. for a maximum of \$240,000 for the term October 19, 2021 through October 18, 2026 to provide a software license to Napa County Emergency Medical Services (EMS) to enable independent verification that the ambulance provider's contractual obligations are being met. [21-932](#)

Attachments: [Agreement](#)

Housing and Homeless Services – Division of CEO's Office

- I.** Director of Housing and Homeless Services requests adoption of a Resolution rescinding and replacing Resolution No. 2021-43 and consenting to, adopting and ratifying the terms and conditions relating to the 2020 Emergency Solutions Grant-COVID 19 allocation in an amount not to exceed \$1,800,000 which provides funding for housing and homeless services programs. [21-1073](#)

Attachments: [Resolution](#)

Human Resources – Division of CEO's Office

- J.** Director of Human Resources requests adoption of a Resolution amending the Table and Index of Classes to increase the salary for the employees covered by the Deputy Sheriff Association, as outlined in "Exhibit A," effective October 16, 2021, with no net increase in full-time equivalents (FTE), and a slight impact to the County General Fund. [21-1052](#)

Attachments: [Resolution](#)

- K.** Director of Human Resources and Director of Health and Human Services Agency request adoption of a Resolution amending the Departmental Allocation List to improve services for multiple divisions of the Health and Human Services Agency, as outlined in “Exhibit A,” effective October 19, 2021, with a net increase of nine (9) full-time equivalents (FTE), and no impact to the County General Fund. [21-1056](#)

Attachments: [Resolution](#)

- L.** Director of Human Resources request adoption of a Resolution amending the Departmental Allocation List for the Human Resources Division of the County Executive Office, by adding one 1.0 FTE Human Resources Assistant - Limited Term, effective October 19, 2021 through June 30, 2023, with a net increase of one full-time equivalent, and a no impact to the General Fund to provide administrative support to the rollout of the new Enterprise Resource Planning software. [21-1057](#)

Attachments: [Resolution](#)

Information Technology Services – Division of CEO’s Office

- M.** Chief Information Officer requests the following actions: [21-916](#)
1. A waiver of competitive bidding requirement and sole source award to AMS.NET (pursuant to Napa County Code Section 2.36.090) for the purchase of (4) Cisco core switches, software, and labor; and
 2. Approval and authorization for the Chair to sign an agreement with AMS.NET, for a maximum of \$163,886 for the term of October 20, 2021 through June 30, 2022 for the purchase of (4) Cisco core switches, software and labor.

Attachments: [Agreement](#)

Library

- N.** Director of Library Services and Community Outreach requests approval of and authorization for the Chair to sign Amendment No. 1 to Agreement No. 190295B with Unique Management Services, Inc. extending the term through June 30, 2026, increasing contract maximum by \$20,000 with a new maximum of \$50,000, and updating the scope of work to include pre-collection services. [21-982](#)

Attachments: [Agreement](#)

Planning, Building and Environmental Services (PBES)

- O.** Director of Planning, Building and Environmental Services requests approval of and authorization for the Chair to sign the following grant agreements for the term July 1, 2021 through June 30, 2022 for a total of \$31,000 pursuant to recommendations by the Wildlife Conservation Commission: [21-909](#)
1. \$10,000 with Land Trust of Napa County for invasive plant removal on a 14-acre meadow in Aetna Springs Preserve;
 2. \$8,000 with Napa County Resource Conservation District to purchase materials and provide technical assistance for Monarch Habitat project; and
 3. \$13,000 with Napa Wildlife Rescue in support of part-time Education Coordinator.

Attachments: [WCC Land Trust Grant Agreement 2021-2022](#)
[WCC RCD Grant Agreement 2021-2022](#)
[WCC NWR Grant Agreement 2021-2022](#)

Public Works

- P.** Director of Public Works requests the following regarding the LNU Fire Complex Guardrail Repair Project, RDS 20-39: [21-892](#)
1. Award of the contract to Highway Specialty Company, Inc. of Palo Cedro, California for their low base bid of \$347,056 and for the Chair to sign the construction contract; and
 2. Approval of a Budget Transfer for the following (4/5 vote required):
 - a. Increase appropriations by \$440,056 in the Accumulated Capital Outlay Fund (ACO) (Fund 3000, Org 3000000) with the use of its available fund balance to be transferred to 2020 LNU-FEMA Guardrail Project (Fund 2040, Org 2040500, Project 21027); and
 - b. Increase appropriations by \$440,056 in Project 21027, RDS 20-39 offset by transfer from the ACO budget.

Attachments: [Bidders List](#)
[Budget Sheet](#)
[Construction Contract](#)

- Q.** Director of Public Works requests approval of and authorization for the Chair to sign an agreement with Universal Site Services, Inc. for an annual maximum amount of \$6,000 for routine services and \$23,000 for non-routine/on-call services for the term October 19, 2021 through June 30, 2024 with the option to extend annually for two (2) additional years at the maximum of \$6,240 for routine services and \$25,000 for non-routine/on-call services in years four and five for power sweeping and cleaning of the 5th Street Parking Garage, other County owned parking facilities, and a portion of Napa County Airport. [21-953](#)
- Attachments:** [Agreement](#)
- R.** Director of Public Works requests approval of and authorization for the Chair to sign Amendment No. 1 to Agreement No. 180269B with REACH Air Medical Services, LLC at no cost to the County to facilitate the installation of an automatic backup generator at 1950 Airport Road in order to provide essential medical services. [21-957](#)
- Attachments:** [Agreement](#)
- S.** Director of Public Works requests the following related to upgrading the HVAC management system for County facilities: [21-958](#)
1. Approval of a Budget Transfer increasing appropriations in the capital asset account by \$246,868 in the Property Management budget (Fund 4300, Org 4300000) with offsetting use of its available fund balance and establishment of a capital asset in the amount of \$246,868 for the purchase of software and select field panel hardware necessary to upgrade the Siemens HVAC Management and Control System (4/5 vote required); and
 2. Authorization for the Chair to sign Amendment No. 4 to Agreement No. 170267B with Siemens Industry, Inc. to increase compensation by \$246,868 (with a new maximum compensation of \$509,363 for the term June 1, 2018 through June 30, 2023) and to update the Scope of Work to upgrade the Siemens Control System software and replace selected field panel hardware.
- Attachments:** [Agreement](#)
- T.** Director of Public Works requests adoption of a resolution temporarily closing a portion of Berryessa Knoxville Road on Saturday October 30, 2021, from 7:00 A.M. to midnight and on Sunday, October 31, 2021 from 9:00 A.M. to 2:00 P.M. for the Alpha Win - Napa Valley (formerly HITS Triathlon). [21-985](#)
- Attachments:** [Course Maps](#)
[Letter to Residents](#)
[Resolution](#)
-

Sheriff

- U. Sheriff requests approval of a Budget Transfer transferring \$5,655 from Law Enforcement Supplies to Equipment appropriation within Sheriff's budget and establishment of a capital asset in the amount of \$5,655 for the purchase of an Echo Elite Trailer. (4/5 vote required) [21-959](#)

8. DISCUSSION OF ITEMS PULLED FROM CONSENT CALENDARS**9. PUBLIC COMMENT****10. ADMINISTRATIVE ITEMS - SPECIAL DISTRICTS****11. ADMINISTRATIVE ITEMS****County Departments****County Executive Office**

- A. County Executive Officer requests appointment of one member and one alternate member of the Board of Supervisors to serve on the California State Association of Counties (CSAC) Board of Directors for the 2021-2022 year beginning on Monday, November 29, 2021. [21-937](#)

Attachments: [Memorandum](#)
[CSAC 2020-21 Board of Directors](#)
[CSAC Board Selection Form for 2021-22](#)

- B. County Executive Officer will provide an update of activities at Lake Berryessa and requests approval of and authorization for the Chair to sign the following agreements: [21-1053](#)

1. Exclusive Negotiation Agreement with Sun Lake Berryessa LLC (Sun Communities) to conduct environmental studies, site investigation and due diligence, prepare environmental documents, and enter into negotiations for a long-term agreement for development and operation of resort concessions at Steele Canyon, Spanish Flat, and Monticello Shores concession areas; and
2. Amendment No. 2 to Agreement No. 170664B-17 with Ragatz Realty increasing the amount by \$15,000 for a new maximum of \$140,000, extending the term through June 30, 2022, and amending the scope of work to include identification of eligible bidders for Berryessa Point.

Attachments: [Agreement - Sun Communities](#)
[Agreement - Ragatz](#)
[Berryessa Point Graphics \(added after meeting\)](#)
[Sun Proposal \(added after meeting\)](#)
[Correction Memorandum \(added after meeting\)](#)

Housing and Homeless Services – Division of CEO's Office**C. SUPPLEMENTAL ITEM****[21-1083](#)**

Director of Housing and Homeless Services and County Executive Officer request discussion and direction regarding a proposal by Burbank Housing to develop supportive and affordable permanent housing at the Wine Valley Lodge facility for individuals experiencing or at-risk of experiencing homelessness that would require the following uses of American Rescue Plan Act Funds and Affordable Housing Trust Funds if a Project Homekey Round 2 Application is approved:

1. Approval of a loan to Burbank Housing in the amount of \$2 million from the State and Local Fiscal Recovery Fund - American Rescue Plan Act allocation to be used for capital costs of acquisition and development of Wine Valley Lodge through a Project Homekey Round 2 grant award;
2. Approval of a Fund Balance Assignment of \$2 million in State and Local Fiscal Recovery Fund (Fund 2460 - Subdivision 1020050), for the capital acquisition loan;
3. Approval of a loan to Burbank Housing of an amount not to exceed \$2 million from the Affordable Housing Trust Fund to serve as a guarantee for a Capitalized Operating Subsidy Reserve as required by the Project Homekey Round 2 grant application; and
4. Approval of a Fund Balance Assignment of \$2 million of Affordable Housing Trust Fund (Fund 2080 - Subdivision 2080010), for the operating subsidy loan guarantee.

Attachments: [Burbank Letter](#)
[PowerPoint \(added after meeting\)](#)

12. SET TIME MATTERS OR PUBLIC HEARING - SPECIAL DISTRICTS

13. SET MATTERS OR PUBLIC HEARINGS**County Departments****Elections**

- A.** SET MATTER 9:30 AM - 20 Minutes [21-940](#)

Introduction and intention to adopt an ordinance amending Chapter 1.08 (Supervisory Districts) of Title 1 (General Provisions) of the Napa County Code, by adding a new Section 1.08.100 to allow for the establishment of supervisory districts by resolution, and deleting Sections 1.08.010 through 1.08.080 of the Code, which set forth the current supervisory district boundaries based on the 2010 federal census, effective upon passage of a resolution establishing new supervisory district boundaries.

Attachments: [Ordinance](#)

Planning, Building and Environmental Services (PBES)

- B.** SET MATTER 10:00 AM - 1 Hour [21-978](#)

Director of Planning, Building and Environmental Services (PBES) requests direction on the attached draft ordinance establishing limits on residential site improvements for parcels within the Agricultural Preserve (AP) Zoning District.

Attachments: [Draft Ordinance](#)
[Ag Conversion Tables](#)
[Public Comments](#)

County Counsel**C. SET MATTER 2:00 PM - 10 Minutes Scarlett Winery****[21-979](#)**

County Counsel requests consideration and adoption of a Resolution of Findings of Fact and Decision on Appeal regarding an appeal filed by George and Nancy Montgomery (Appellant) to a decision by the Napa County Planning Commission on January 15, 2020, to approve an application submitted by Sherrett Reicher, Alsace Company, LTD (Applicant) for Use Permit No. P16-00428-UP to construct and operate a new 30,000 gallon per year winery known as the Scarlett Winery as further described in the Staff Report prepared for this matter. The project is located on an approximately 47.88 acre site at 1052 Ponti Road, which intersects with Skellenger Lane just west of Silverado Trail, St. Helena, CA; APN: 030-280-010 (the Property).

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Revised Mitigated Negative Declaration (Revised MND). According to the proposed Revised MND, the proposed project would not have any potentially significant environmental impacts after implementation of mitigation measures proposed for the following area: Transportation. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

Attachments: [Resolution](#)
[Exhibit A](#)

14. LEGISLATIVE ITEMS**15. BOARD OF SUPERVISORS COMMITTEE REPORTS AND ANNOUNCEMENTS****16. BOARD OF SUPERVISORS FUTURE AGENDA ITEMS****17. COUNTY EXECUTIVE OFFICER REPORTS AND ANNOUNCEMENTS****18. CLOSED SESSION****A. CONFERENCE WITH LEGAL COUNSEL - POTENTIAL INITIATION OF LITIGATION****[21-1068](#)**

Potential initiation of litigation pursuant to Government Code Section 54956.9(d)(4): (1 matter)

- B.** CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8) [21-1051](#)

Property: Napa County Fairgrounds, Calistoga, California (APNs 011-140-006, 011-140-007, 011-140-056, 011-140-009, and 011-140-055)
Agency Negotiator: Minh C. Tran, County Executive Officer
Negotiating Parties: Napa County and City of Calistoga
Under Negotiation: [X] Price [X] Terms of Payment

- C.** CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8) [21-1077](#)

Property: 2344 Old Sonoma Road, Napa, California
Agency Negotiator: Steve Lederer, Director of Public Works
Negotiating Parties: Napa County and Napa Community Real Estate Fund, LP
Under Negotiation: [X] Price [X] Terms of Payment

19. ADJOURNMENT

ADJOURN TO THE BOARD OF SUPERVISORS REGULAR MEETING, TUESDAY, NOVEMBER 2, 2021 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, OCTOBER 15, 2021 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



Napa County

1195 THIRD STREET
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NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-964

TO: Board of Supervisors
FROM: Christine Briceno - Director of Human Resources
REPORT BY: Jeanette Perry - Human Resources Service Specialist
SUBJECT: Introduction of New Employees

RECOMMENDATION

Director of Human Resources to introduce new County employees.

EXECUTIVE SUMMARY

Offered once a month, this presentation includes an introduction of the previous month's newly hired employees to the Board.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: N/A

BACKGROUND AND DISCUSSION

New Napa County employees participate in New Hire Enrollment with Human Resources staff on their first day. The new employees complete required paperwork, fingerprinting, safety training, and technology training. Today's introduction to the Board of Supervisors typically occurs in the second month of employment, and offers new employees the opportunity to meet the Board in-person.



Napa County

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Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1061

TO: Board of Supervisors
FROM: Jon Gjestvang, Chief Information Officer - Information Technology Services
REPORT BY: Shawn Smith, Supervising Staff Services Analyst
SUBJECT: Presentation of a proclamation declaring October 2021 as "Cybersecurity Awareness Month"

RECOMMENDATION

Presentation of a proclamation to Jon Gjestvang, Chief Information Officer, declaring October 2021 as "Cybersecurity Awareness Month" in Napa County.

EXECUTIVE SUMMARY

The Napa County Information Technology Services Division is responsible for the development, operation and maintenance of all County information systems, including the Internet and Intranet. Cybersecurity is a vitally important component in protecting those information security systems. The purpose of Cybersecurity Awareness Month is to increase awareness and educate County staff, citizens and interested groups about the importance of maintaining the security of cyberspace and to increase our resiliency in the event of a cyber incident.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No
County Strategic Plan pillar addressed: Effective and Open Government

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.

BACKGROUND AND DISCUSSION

Since its inception in 2004 by the U.S. Department of Homeland Security, October has been nationally recognized as Cybersecurity Awareness Month. The Napa County Information Technology Services Division is responsible for the development, operation, and maintenance of all County information systems, including the Internet and Intranet. Cybersecurity is a vitally important component in protecting those information security systems.

The purpose of Cybersecurity Awareness Month is to increase awareness and educate County staff, citizens and interested groups about the importance of maintaining the security of cyberspace and to increase our resiliency in the event of a cyber incident. Through the STOP.THINK.CONNECT Campaign, ITS distributes flyers, posters, security emails, staff training and other campaigns to instill security awareness.

The overarching theme for Cybersecurity Awareness Month 2021 is “Do Your Part. #BeCyberSmart.” The theme empowers individuals and organizations to own their role in protecting their part of cyberspace, with a particular emphasis on the key message for 2021: “Do your part #BeCybersSmart.” If everyone does their part - implementing stronger security practices, raising community awareness, educating vulnerable audiences or training employees - our interconnected world will be safer and more resilient for everyone.

Proclamation



A Tradition of Stewardship
A Commitment to Service

THE BOARD OF SUPERVISORS | NAPA COUNTY, CALIFORNIA



Napa County

1195 THIRD STREET
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Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1076

TO: Board of Supervisors

FROM: David Morrison, Director of Planning, Building, and Environmental Services

REPORT BY: David Morrison, Director of Planning, Building, and Environmental Services

SUBJECT: Adoption of a Resolution to Amend the Groundwater Sustainability Plan
Advisory Committee Bylaws to extend the deadline for recommending a Groundwater
Sustainability Plan

RECOMMENDATION

Director of Planning Building and Environmental Services requests adoption of a resolution amending the Bylaws of the Groundwater Sustainability Plan Advisory Committee (GSPAC) to extend the deadline for recommending the draft Groundwater Sustainability Plan (GSP) from November 1, 2021, to November 19, 2021.

EXECUTIVE SUMMARY

Adoption of the proposed resolution will amend the Bylaws of the Groundwater Sustainability Plan Advisory Committee (GSPAC) extend the deadline for recommending the draft Groundwater Sustainability Plan (GSP) to the GSA Board of Directors from November 1, 2021, to November 19, 2021. The additional time is needed by the GSPAC to complete their work due to delays over the past year associated with the COVID-19 pandemic, two separate wildfires, and the drought. The deadline for the GSA to submit the adopted GSP to the California Department of Water Resources is January 31, 2022.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

County Strategic Plan pillar addressed: Effective and Open Government

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.

BACKGROUND AND DISCUSSION

At its June 9th 2020 regular meeting, the Board created the Groundwater Sustainability Advisory Committee (GSPAC) for the purpose of reviewing and advising on the preparation of a Groundwater Sustainability Plan (GSP). The Board adopted bylaws for the GSPAC and appointed 25 individuals to fill various categories set forth in the June 9th staff report and listed in the bylaws.

At the October 6, 2020 regular meeting, the Board adopted Resolution 2020-06 to amend the GSPAC bylaws to clarify the composition of the committee membership and the categories for appointments.

Section II of the existing bylaws state that: “Working with staff, consultants, and a facilitator in a public forum, the GSPAC shall submit a recommended GSP to the Napa County Groundwater Sustainability Agency (GSA) Board of Directors for consideration no later than November 1, 2021.” Additional time is needed by the GSPAC to complete their work due to delays over the past year associated with the COVID-19 pandemic, two separate wildfires, and the drought. Staff recommends that the deadline be extended from November 1 to November 19, 2021.

The draft GSP is tentatively scheduled to be considered by the GSA Board on December 7 and 14, 2021.

The deadline for the GSA to submit the adopted GSP to the California Department of Water Resources is January 31, 2022.

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE NAPA
COUNTY GROUNDWATER SUSTAINABILITY AGENCY, APPROVING
CREATION OF THE GROUNDWATER SUSTAINABILITY PLAN
ADVISORY COMMITTEE**

WHEREAS, the Napa County Board of Supervisors adopted Resolution 2019-152 on December 17, 2019 electing to form the Napa County Groundwater Sustainability Agency (NCGSA) to undertake sustainable groundwater management of the Napa Valley Subbasin; and

WHEREAS, the Board of Supervisors serves as the Board of Directors for the NCGSA which has those powers set forth in California Water Code Section 10725 and following; and

WHEREAS, on June 9, 2020 by Resolution 2020-04, the Board established the Groundwater Sustainable Plan Advisory Committee (GSPAC), an ad hoc advisory committee representative of various stakeholders, public agencies industry groups, and beneficial users of groundwater within the Subbasin to complement the work of agency staff and technical experts in developing the Groundwater Sustainability Plan (GSP); and

WHEREAS, the bylaws were amended by the Board of Directors on October 6, 2020, to clarify the composition of the GSPAC, as contained in adopted Resolution 2020-06; and

WHEREAS, the schedule for developing a recommended GSP has been delayed due to a series of emergencies, including two wildfires, the COVID-19 pandemic, and the current drought, all of which may prevent the GSPAC from submitting a recommended GSP to the Board of Directors by November 1, 2021, as currently required, and therefore requires amendment to extend the deadline to November 19, 2021.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby amends the bylaws of the Groundwater Sustainability Advisory Committee as set forth in Exhibit A.

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY
ADOPTED** at a regular meeting of the NCGSA Board of Directors, held on the 19th day of October 2021 by the following vote:

AYES: DIRECTORS _____

NOES: DIRECTORS _____

ABSTAIN: DIRECTORS _____

ABSENT: DIRECTORS _____

By: _____
ALFREDO PEDROZA, Chair
Napa County Groundwater Sustainability Agency

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <i>Chris R.Y. Apallas</i> Deputy County Counsel</p> <p>Date: October 12, 2021</p>	<p>APPROVED BY THE NCGSA BOARD OF DIRECTORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Directors</p> <p>By: _____</p>
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Exhibit “A” – Amended Bylaws - Clean

EXHIBIT “A”
BYLAWS OF THE NCGSA
GROUNDWATER SUSTAINABILITY PLAN ADVISORY COMMITTEE

- I. NAME.** The Committee shall be designated the Groundwater Sustainability Plan Advisory Committee, referred to hereafter as the “GSPAC”.
- II. PURPOSE.** The GSPAC is hereby created to advise the NCGSA Board of Directors on the preparation of a Groundwater Sustainability Plan (GSP), with policies and recommendations to manage the groundwater within the Napa Valley Groundwater Subbasin (Subbasin) to ensure its long-term protection and availability. Working with staff, consultants, and a facilitator in a public forum, the GSPAC shall submit a recommended GSP to the Napa County Groundwater Sustainability Agency (GSA) Board of Directors for consideration no later than November 19, 2021.
- III. MEMBERSHIP.**
- A. Composition.** The GSPAC shall be comprised of a maximum of 25 members, appointed by the NCGSA Board, as follows:
- Four (4) members shall represent the three cities and town located within the Subbasin (Calistoga, St. Helena, Yountville and Napa);
 - One (1) member shall represent the Napa Sanitation District;
 - Two (2) members shall represent legal holders of surface water rights along the Napa River within the Subbasin;
 - Two (2) members shall represent owners or operators of legally entitled groundwater dependent public water systems within the Subbasin;
 - Two (2) members shall represent the local industry groups representing agricultural interests, with one member from each group (Coalition Napa Valley, Napa County Farm Bureau, Napa Valley Grapegrowers, Napa Valley Vintners, and Winegrowers of Napa County);
 - Five (5) members shall represent agricultural interests within the Subbasin;
 - Five (5) members shall represent environmental users of groundwater within the Subbasin and shall be residents of Napa County;
 - Two (2) members shall represent disadvantaged communities located within the Subbasin; and
 - Two (2) members shall represent the public at large and shall be residents of Napa County.
- B. Term.** The term of office for GSPAC members shall commence upon appointment by the GSA Board of Directors and end on January 31, 2022. The term of the Committee may be extended by the Board of Directors at their discretion.

- C. **Resignation.** Any appointed member may resign by giving written notice to the GSPAC.
 - D. **Vacancies.** Whenever an unscheduled vacancy occurs, the Board of Directors shall appoint a new member to fill the vacancy. The term for the incoming member will be for the remainder of the original term. Notwithstanding Section 3 of Resolution 2020-04, the Board of Directors may directly appoint the successor nominee of a public agency or industry group representative whenever a vacancy occurs by a representative of one of these agencies or groups.
 - E. **Attendance.** Committee members are expected to attend all regular meetings. Members shall notify the Chair or Secretary of any expected absence by 5:00 p.m. of the day prior to the meeting. Any member of the GSPAC who has two (2) or more unexcused absences shall have their appointment reviewed by the GSPAC, with possible recommendation to the Board of Directors for continuation or removal from the GSPAC. Excused absences will be determined by the Chair.
 - F. **Compensation.** Members of the GSPAC shall serve without compensation and shall not receive reimbursement for any expenses incurred while conducting official business.
 - G. **Authority to Bind.** No member of the GSPAC shall have any power or authority to bind the GSPAC by any contract, to pledge its credit, or to render it liable for any purpose in any amount.
- IV. **OFFICERS.** The officers of the GSPAC shall be the Chair, Vice-Chair and Secretary, chosen as follows:
- A. **Time of Election.** At the first organizational meeting, the members of the GSPAC shall elect the Chair and Vice-Chair from among their members. The Secretary shall be an employee or consultant of Napa County designated from time to time by the Napa County Director of Planning, Building, and Environmental Services to perform the functions of Secretary described in these Bylaws.
 - B. **Term.** The Chair and Vice-Chair nominated and elected at the initial meeting of the GSPAC shall begin their terms of office immediately upon election. Thereafter, the officers shall be nominated and elected in January of each year, beginning with 2021 and shall serve until their successors are elected and assume office. If the office of Chair becomes vacant during the term, the Vice-Chair shall become Chair. Vacancy in the office of Vice-Chair during the term shall be filled by election to serve the remainder of the term.
- V. **DUTIES.**

- A. Duties of the Chair and Vice-Chair.** The Chair, or the Vice Chair in the absence of the Chair, shall:
1. Act as the presiding officer of the GSPAC and in that capacity shall preserve order and decorum;
 2. Convene and adjourn meetings;
 3. Call for roll and confirm determination of a quorum;
 4. Decide questions of order subject to being overruled by a two-thirds vote;
 5. Team with the GSPAC Facilitator to maintain a collegial and constructive tone and reinforce work in the pursuit of the GSPAC's Purpose;
 6. Team with the Facilitator and staff to develop and finalize the meeting agenda;
 7. Turn meetings over to the Facilitator to guide and manage the discussion;
 8. Work with the Facilitator to elicit proposals and refinements of proposals;
 9. Make requests to the Secretary as to information needs;
 10. Team with the Facilitator to summarize conclusions and recommendations; and
 11. Perform such other duties as are required by these Bylaws, the resolution(s) of the Napa County GSA creating and/or modifying the composition and purpose of the GSPAC, or by vote of the GSPAC. The Chair shall have all the rights and duties enjoyed by any other member of the GSPAC, including the right to make and second motions.
- B. Duties of the GSPAC Members.** Members appointed to the GSPAC shall:
1. Review and comment on materials and documents provided;
 2. May make suggestions and draft and refine proposals;
 3. May request data and analysis to inform deliberations in support of the GSPAC's purpose;
 4. May pose clarifying questions to consulting technical presenters or agency staff;
 5. Propose topics for informational briefings and discussion for inclusion on future agendas; and
 6. Be encouraged to not lobby, in their capacity as GSPAC members, the NCGSA Board of Directors or any State agency for any recommendations or opinions which do not reflect a majority's valid and binding action taken pursuant to Section VIII D.
- C. Duties of the GSPAC Secretary.** The Secretary of the GSPAC shall:
1. In coordination with the Facilitator and consultant(s), organize, prepare for, and schedule meetings;
 2. In consultation with the Chair and Facilitator, develop and distribute draft agendas;
 3. Support the work of the GSPAC, as requested by the Chair; and
 5. During discussion, may identify points that may lie outside the GSPAC's purpose, or point out County operations, policies, plans or ordinances for clarity, modification or consistency.

D. Duties of the GSA Consultants. The GSA's Consultants supporting the development of the GSP and the Purpose of the GSPAC shall:

1. Prepare documents to be provided to GSPAC as requested by the Secretary;
2. Conduct research, scientific inquiry and advice as requested;
3. Shall respond to GSPAC Members' clarifying questions as framed by the Facilitator; and
4. Shall vet GSPAC recommendations for engineering validity.

E. Duties of the GSPAC Facilitator. The Facilitator of the GSPAC shall:

1. Work closely with the Chair and Secretary in all aspects of meeting preparation and execution;
2. Guide and oversee discussions and manage GSPAC Member involvement, including conferring with members between meetings as appropriate;
3. Work with the Chair to ensure consistent application of the Committee ground rules and bylaws;
4. Work with the Chair to recognize members in the queue who wish to speak;
5. Summarize and restate members' comments as appropriate; clarify the basis of member statements;
6. Identify and clarify topics of agreement, areas of divergence and uncertainty, strive to narrow areas of disagreement, and identify areas in need of further information or analysis;
7. Frame straw votes to test preferences and track progress toward emerging agreement;
8. May suggest solutions to bridge and reconcile divergent proposals, and
9. Support the Chair, Secretary, consultant(s) and staff in reporting back to the GSA.

VI. MEETINGS

A. Date and Location of Regular GSPAC Meetings. Regular meetings of the GSPAC shall be held every month as shown on a calendar which the GSPAC shall adopt at its first meeting of each calendar year. Notwithstanding the foregoing, any regularly scheduled meeting of the GSPAC may be canceled by majority vote of the GSPAC or, for lack of business or a quorum, by the Chair or Secretary. Meetings shall be held in the Napa County Board of Supervisors Chambers at the Napa County Administration Building.

B. Time of Regular GSPAC Meetings. Regular meetings of the GSPAC shall commence at 1:30 p.m. and continue until all agenda business is concluded unless adjourned earlier on motion of the GSPAC for any reason or by the Chair or Secretary for lack of a quorum or unavailability of a meeting location due to an emergency.

C. Emergency GSPAC Meetings. Emergency meetings of the GSPAC shall be called in conformance with the provisions of the Brown Act (Government Code Section 54950 and following).

- D. Special GSPAC Meetings.** Special meetings of the GSPAC shall be called in conformance with the provisions of the Brown Act, including 24 hour notice of the meeting posted at the regular meeting location, and in those local newspapers that have requested to be informed of GSPAC meetings.
- E. Agendas.** The Secretary shall prepare, post, and otherwise give notice of the agenda for each meeting of the GSPAC in accordance with the requirements of the Brown Act. No matter may be considered or acted upon unless it is included on the posted agenda or a supplemental agenda. If not so included, questions or comments regarding the item shall be limited to the scope permitted for "public comment" under the Brown Act. Supplemental agendas will be prepared and considered by the GSPAC only under the following conditions:
- 1. Emergencies.** Upon a determination by the GSPAC that an emergency situation exists, as defined in Section 54956.5 of the Government Code.
 - 2. Recently Continued Item.** The item was properly posted for a prior meeting of the GSPAC occurring not more than five (5) calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.
- F. Public Access.** All meetings of the GSPAC shall be open and accessible to the general public in accordance with the Ralph M. Brown Act (Government Code Section 54950, 54950(b), et seq.) and any executive orders issued by the Governor related to the Brown Act which may be in effect. Opportunity for public comment will be included in each agenda with individual presentation being limited to three minutes. The Chair or Committee, by vote, may close the meeting to the public only if in accordance with the Brown Act.

VII. CONDUCT OF MEETINGS

- A. Order of Business.** The regular order of business of the GSPAC shall be:
1. Call to order.
 2. Approval of the minutes of the previous meeting.
 3. Public comment on unagendized items.
 4. Consideration and action on agenda items.
 5. Adjournment.

In the event public comments exceed ten minutes, the Chair may continue public comment on unagendized items to the end of the meeting if desired.

- B. Meeting Procedure.** Unless otherwise provided by these Bylaws or required by law, all proceedings before the GSPAC shall be conducted in accordance with the adopted GSPAC Ground Rules.

- C. **Recording of Meetings.** Any meeting of the GSPAC, other than a closed session permitted under the Brown Act, may be recorded by any person, unless the GSPAC determines that such recording could constitute a disruption of the proceedings.
- D. **Presentations to the GSPAC.** Any person desiring to address the GSPAC shall be requested, when recognized by the Chair, to give their name and address to facilitate preparation of the minutes, although no persons shall be denied recognition or denied the opportunity to speak solely because they decline to state their names and addresses. The Chair may, in the interest of facilitating the business of the GSPAC, set in advance of the presentation of public input reasonable time limits for oral presentations. Persons may submit written comments in lieu of oral comments if the Chair determines that a reasonable opportunity for oral presentations has been provided and, in such a case, the matter may be continued to a later date to allow a reasonable time for such submittals to occur.
- E. **Recordation of GSPAC Official Actions.** All official actions or decisions by the GSPAC shall be entered in the minutes of the GSPAC kept by the Secretary. The vote tally on every question shall be recorded, except where a roll call vote is used, the votes of each member of the GSPAC shall be recorded. Only written action minutes will be maintained; however, electronic recordings may be made by the Secretary of each meeting of the GSPAC which shall be available to the public online for inspection. However, the facilitator, in consultation with the Chair, may elicit expressions of interest on tentative proposals prior to their introduction as motions for proposed official actions.

VIII. VOTING AND QUORUM

- A. **Roll Call Vote.** A roll call vote may be required for voting upon any motion of the GSPAC, at the discretion of the Chair.
- B. **Inaudible Votes.** Any member present who does not vote in an audible voice shall be recorded as voting "aye". A member may abstain from voting only if the member has recused himself or herself from participating due to a conflict of interest under Government Code Section 87100 and following, in which case the member shall not be present in the meeting room during the discussion and action on the item.
- C. **Quorum.** A quorum for the transaction of business shall exist only as long as a majority of the GSPAC members are present. For purposes of this Bylaw, "majority of the members" means a majority (13) of the authorized positions, whether or not all of the positions have been filled by the Board of Directors.
- D. **Number of Votes Required for Action.** No action or recommendation of the GSPAC shall be valid and binding unless a quorum is present and the action is

approved by a two-thirds vote of the members actually present at the meeting. Each member shall have one vote. No votes may be cast by proxy. Tie votes shall be considered as denial of the motion.

- E. Voting Affected by Conflict of Interest.** As a general rule, no member shall participate as a member in any discussion or voting if to do so would constitute a conflict of interest. However, if a quorum cannot be achieved or the required number of affirmative votes for action obtained because conflicts of interest exist that prevent members having such conflicts from discussing or voting on the matter, and the conflicts are such that an insufficient number of non-conflicted members will be available to vote at a later date even if the matter is continued, then the matter shall not be continued and a sufficient number of members having conflicts of interest, selected by lot, shall be allowed to participate to provide enough votes for the GSPAC to form a quorum and take affirmative action.
- F. Motion to Reconsider.** The GSPAC may reconsider a matter during the meeting at which the vote was taken, provided all members who were present when the matter was discussed and voted upon are still present and provided further that the motion to reconsider is made by a member who voted with the prevailing side. A motion for reconsideration shall have precedence over every motion except a motion to adjourn. A final vote on any matter may also be placed on the agenda for reconsideration by the GSPAC upon motion of any member at any later meeting. When the GSPAC approves a motion for reconsideration, the GSPAC may, in its discretion, reconsider the matter immediately or at a later date.

IX. SUBCOMMITTEES.

Ad Hoc Subcommittees. The GSPAC hereby authorizes the creation of ad hoc subcommittees on special subjects from time to time so that GSPAC members having the necessary expertise to conduct field, plan or other specialized reviews, or to investigate, observe, review, or otherwise study and report back their observations and conclusions to the full GSPAC for possible further action. When creating such ad hoc committees, the GSPAC shall specify the subject to be investigated and time to report, and shall appoint those GSPAC members who will serve on the ad hoc subcommittee.

Residents of the County with special expertise or interest who are not members of the GSPAC may be appointed to the subcommittee, but in no instance may the number of non-members exceed the number of GSPAC members on the subcommittee. The number of GSPAC members appointed to any particular ad hoc committee shall be less than the number of members required to constitute a quorum of the full GSPAC. Upon presentation of its report to the full GSPAC, each such ad hoc subcommittee shall cease to exist. Ad hoc subcommittees created pursuant to this subsection shall not be subject to the Brown Act.

X. CHANGES TO BYLAWS

- A. **Adoption.** Approval by the Board of Directors of the NCGSA shall be required to adopt changes to these Bylaws.
- B. **Amendments.** These Bylaws may be amended or repealed and new Bylaws adopted by the vote of two-thirds (2/3) of the GSPAC at any regular or special meeting, subject to approval by the NCGSA. Any member of the GSPAC may propose amendments to the Bylaws. Written notice of any proposed amendments must be sent to GSPAC members at least fourteen (14) days prior to the meeting at which the proposed amendments will be voted upon.



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1064

TO: Board of Supervisors
FROM: Minh C. Tran - County Executive Officer
REPORT BY: Daniel Sanchez - Management Analyst
SUBJECT: 2021-2022 Citizens' Option for Public Safety Funds

RECOMMENDATION

County Executive Officer requests approval of a Budget Transfer increasing appropriations in the Special Revenue Fund Citizens' Option for Public Safety (Fund 2500 Organization 1020086) in the amount of \$248,595 with offsetting revenue from 2011 Realignment, Citizens' Option for Public Safety, which will be transferred as needed to the Sheriff, District Attorney and Department of Corrections for operations.

EXECUTIVE SUMMARY

The Sheriff, District Attorney and Department of Corrections receive funding under the Citizen's Option for Public Safety program. This program is part of 2011 Realignment. The Board of Supervisors is required to approve expenditure plans before the Auditor-Controller allocates the funds to the Departments.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	District Attorney; Sheriff; Corrections
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	This item is discretionary in that there is no mandate to accept or expend Citizen's Option for Public Safety funding. The District Attorney, Sheriff and Department of Corrections receive these funds to offset the cost of law enforcement services and equipment to the General Fund and enhance the ability to perform assigned duties.
Is the general fund affected?	No

Future fiscal impact:	The funding will be budgeted accordingly in future fiscal years.
Consequences if not approved:	If the item is not approved, the District Attorney, Sheriff and Department of Corrections will not be able to receive funding under the Citizen's Option for Public Safety program. An alternative expenditure plan will need to be developed or funds will revert to the State.
County Strategic Plan pillar addressed:	Healthy, Safe, and Welcoming Place to Live, Work, and Visit
Additional Information	Click or tap here to enter text.

ENVIRONMENTAL IMPACT

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

BACKGROUND AND DISCUSSION

The Citizens' Option for Public Safety (COPS) program provides funding to eligible local law enforcement agencies in the County of Napa. Funds are allocated from the Local and Public Safety Account which is funded by a portion of Vehicle License Fees. The Adopted Budget 2021-2022 inadvertently did not include a budget for the COPS program. The funds are provided to each law enforcement agency, each year, as prescribed in Section 30061-30065 of the Government Code to enhance law enforcement related operations. In Fiscal Year 2021-2022, the Sheriff's Office and the police departments in American Canyon, Calistoga, Saint Helena and Yountville are guaranteed a minimum of \$100,000 each and it is estimated that \$35,000 will be allocated to the District Attorney's Office. The Department of Corrections will receive an estimated \$38,567. An estimated \$120,429 will go to the City of Napa.

The Government Code requires the Auditor-Controller to release funds upon the certification of annual expenditure plans by the COPS Oversight Committee. Before the COPS Oversight Committee can certify expenditure plans, the governing body of the County and each city must approve the individual expenditures. The following is a brief summary of the expenditure request from each Department.

District Attorney

The District Attorney's Office estimates \$35,000 in allocated funds in Fiscal Year 2021-2022. Funds will be used to purchase safety equipment and supplies, and to acquire technological and training resources necessary to enhance the work of the District Attorney Investigators. Specifically, the District Attorney's Office will be purchasing video and camera equipment for crime scene and case documentation and safety items such as Taser batteries and replacement cartridges for both training and carrying while on duty, OC Pepper Spray, Narcan replacements, continuing access to online records systems for investigative leads, and providing for training needs of investigative staff.

Sheriff

The Sheriff's Office has estimated \$175,028 in allocated funds in Fiscal Year 2021-2022. The Sheriff is requesting approval to expend funds to partially offset the cost of one Deputy Sheriff position responsible for the coordination of the Sheriff's Activity League activities and other duties as assigned. COPS funds will cover approximately 71% of the cost of this position. The Sheriff's Activity League is a community-based crime prevention program that brings kids under the supervision and constructive influence of law enforcement and provides quality activities designed to develop discipline, self-esteem, mutual trust, and respect. The remainder of this position is funded by the County General Fund.

Department of Corrections

The Department of Corrections estimates \$38,567 in allocated COPS funds in Fiscal Year 2021-2022. The funds will be directed to providing WiFi connectivity for nursing staff delivering health care to inmates assigned to the ground floor housing unit and to enhance reliability of video arraignments conducted from the ground floor.



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-961

TO: Board of Supervisors
FROM: Jason Martin, Fire Chief County Fire Department
REPORT BY: Stacie McCambridge, Staff Services Manager I
SUBJECT: Air Instrumentation - Napa Interagency Rescue Team Professional Service Agreement

RECOMMENDATION

County Fire Chief requests approval of and authorization for the Chair to sign Agreement No. 220157B with Air Instrumentation for a maximum of \$19,500 for the term of September 1, 2021, through June 30, 2022, with an automatic two-year renewal provision to supply, maintain, and service hazardous materials equipment for the Napa Interagency Rescue Team.

EXECUTIVE SUMMARY

The authorization of this agreement with Air Instrumentation provides for supply, maintenance, and service to hazardous materials equipment used by the Napa Interagency Rescue Team personnel. This equipment is used by emergency rescue personnel in order to respond safely to emergency incidents that contain airborne toxins not readily identifiable by sight or smell.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Fire Fund
Is it Mandatory or Discretionary?	Mandatory
Discretionary Justification:	N/A
Is the general fund affected?	No
Future fiscal impact:	These inspections are completed annually. County Fire will continue to budget for inspecting, testing, and repairing of its Hazmat equipment.

Consequences if not approved: Not approving this contract would hamper the Fire Department's efforts in the annual inspection of the Hazmat equipment inventory. Maintenance and calibration are required by law and the manufacturers.

County Strategic Plan pillar addressed: Healthy, Safe, and Welcoming Place to Live, Work, and Visit

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.

BACKGROUND AND DISCUSSION

Napa County Fire currently utilizes Air Instrumentation for services to maintain County-owned air sensors and monitors used by the Napa Interagency Rescue Team. Hazardous materials incidents can expose emergency responders to dangers that require the use of air-monitoring instruments to operate safely. These dangers can include thermal, radiation, and oxygen concentrations and chemical hazards that are not visible to the naked eye. The equipment is an essential tool for those emergency responders who respond initially to an incident involving potential chemical exposures in an anoxic or flammable atmosphere. These monitors will warn of the percentage of the toxic exposure allowing the emergency responders to secure the area and proceed with proper setup of the situation.

The vendor provides services to ensure County-owned hazardous materials monitoring equipment so that it is calibrated and maintained to recognized standards and requirements. This service is required by the law and by the manufacturers.

The County Fire Department has worked with Air Instrumentation in the past and is asking for approval to continue the agreement. Staff is requesting a service agreement for the term September 1, 2021, through June 30, 2022, with a 2-year roll over clause. The effective date reflects dates of services provided prior to the agreement being in place.

NAPA COUNTY AGREEMENT NO. 220157B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of this 1st day of September, 2021, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Air Instrumentation of California, Inc., a California corporation, whose mailing address is 25789 Dollar Street, Suite #1, Hayward, California, 94544, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to supply maintain, and service the COUNTY's air monitors that are used by the Napa County Fire Department Hazardous Materials Rescue Team; 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 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, 2022, 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 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," 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. 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 SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500) 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.

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 twice to the Napa County Staff Services 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 Napa County Clerk of the Board of Supervisors 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. RESERVED

(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 County Fire 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 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

Napa County Fire Department
1125 Third Street, 2nd Floor
Napa, CA 94559

CONTRACTOR

Air Instrumentation of California, Inc.
25789 Dollar Street, Suite A #1
Hayward, CA 94544

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 Fire Chief. 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 of 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.

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 County Fire Chief.

(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.

(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 Napa County 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, their 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 their name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or their 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 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.

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 that 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.

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. [RESERVED]

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

AIR INSTRUMENTATION OF CALIFORNIA, INC.

By Maureen Hayes
MAUREEN HAYES, President

"CONTRACTOR"

NAPA COUNTY, a political subdivision of
the State of California

By _____
ALFREDO PEDROZA, Chair
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Shana A. Bagley</u> County Counsel</p> <p>Date: <u>September 15, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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EXHIBIT "A"**SCOPE OF WORK**

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

Air Instrumentation of California will service and complete maintenance on the air monitors that Napa County Fire currently owns and that are used by the Napa County Fire Department Hazardous Materials Rescue Team.

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

CONTRACTOR shall:

1. Maintain a List of the following Equipment:

- a) One (1) MSA Altair 5x, 4-Gas gas detectors (Sensors to include CO, H2S, LEL, and O2, with pump).
- b) Two (2) MSA Altair4x, 4-Gas detectors, (Sensors include CO, H2S, LEL, and O2, diffusion).
- c) Two (2) MSA GX2 Calibration stations, one for Altair 4X and one for Altair 5X.
- d) One (1) 58-liter cylinder of 4-gas mix per every Napa County/Cal Fire Station per year.

2. Service and Maintenance Responsibilities (Performance Standards):

- a) Every ninety (90) days, CONTRACTOR will come on site to a specified location to inspect, clean, and calibrate the instrumentation outlined in Section 1(a). The monitors will be serviced in preparation for the next 90 days service cycle. **This service may be performed by mail if necessary.**
- b) CONTRACTOR will perform repairs for damage occurring during normal usage of equipment. Total loss or complete destruction of unit will result in replacement charge of \$700.00.
- c) CONTRACTOR will maintain all service records and provide a copy of those records to Napa County Fire upon request.
- d) CONTRACTOR will be responsible for any and all sensor replacement, should a sensor fail to calibrate.
- e) CONTRACTOR will provide loaner units in the event of unit failure between service intervals.

3. Training

- a) Upon execution of this Agreement CONTRACTOR will deliver within a reasonable period of time, the supplied equipment and provide no less than two (2) hours of training. CONTRACTOR will also provide a minimum of two (2) hours of annual training on the equipment for the duration of the Agreement.

COUNTY shall:

1. Pay Fee for Equipment and Service:

- a) \$6,204.000 due and payable upon receipt of invoice on an annual basis.

2. Promptly Return Monitors for Calibration and Service:

- a) COUNTY employees will endeavor to return equipment for service in a timely manner in the supplied containers.

3. Responsible for lost, stolen or destroyed equipment:

- a) COUNTY agrees to be responsible for the replacement costs of any supplied equipment that is lost, stolen, or destroyed while in its possession.
CONTRACTOR will repair or replace equipment that is damaged in the normal course of use.

4. Promptly Return Equipment at the Termination of this Agreement:

- a) COUNTY agrees to promptly return ALL of the equipment supplied under the terms of this Agreement following the termination of said agreement, whether that occurs at the conclusion of the Agreement or under the terms of the Agreement.

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, 3 rd 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, 3 rd Floor	Engineer	4	\$165.00	660.00
	Conf w/Owner re 2 nd Floor	Smith,	.5	\$165.00	82.50
		Engineer			
1/3/15	Mtg w/Jones re 2 nd Floor; conf	Smith,			
1/3/15	w/Owner	Engineer	1.5	\$165.00	247.50
	Mtg w/Smith; conf w/Owner re 2 nd	Jones, PE	1.5	\$195.00	292.50
	Floor				
TOTAL					



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-973

TO: Board of Supervisors
FROM: Allison Haley - District Attorney
REPORT BY: Sophie Johnson - Staff Services Manager
SUBJECT: Audit reports for the District Attorney's Office Insurance Fraud Grant Programs Awarded by the California Department of Insurance for FY 2020-21.

RECOMMENDATION

District Attorney and Auditor-Controller request the Board accept and instruct the Clerk of the Board to file the Audit Reports for the Napa County District Attorney's Office Automobile Insurance Fraud and Workers' Compensation Insurance Fraud Grant Programs awarded by the California Department of Insurance for the fiscal year ended June 30, 2021.

EXECUTIVE SUMMARY

An external auditor has audited the financial schedules of the Automobile Insurance Fraud and Workers' Compensation Insurance Fraud Grant Programs for the fiscal year ended June 30, 2021, as required by the grant agreement. These grants have been awarded to the Napa County District Attorney's Office by the California Department of Insurance.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No
County Strategic Plan pillar addressed: Healthy, Safe, and Welcoming Place to Live, Work, and Visit

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.

BACKGROUND AND DISCUSSION

The California Department of Insurance requires that a financial audit in accordance with Government Auditing Standards be performed annually for these programs by an independent auditor.

An external certified public accountant firm was retained and conducted an audit of the Automobile Insurance Fraud and Workers' Compensation Insurance Fraud Grant Programs for the fiscal year ended June 30, 2020 in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to the financial audits contained in Government Auditing Standards.

Results of the Engagement:

If findings occur, they are categorized as follows:

Material Weakness - A deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Department's financial records will not be prevented, or detected and corrected on a timely basis.

Significant Deficiency - A deficiency, or 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.

There were no reportable findings for the Workers' Compensation Insurance or Automobile Insurance Fraud Grant Program for the fiscal year ended June 30, 2021.

The audit reports are available through the Clerk of the Board and are attached to this agenda item.

**NAPA COUNTY
DISTRICT ATTORNEY
CALIFORNIA DEPARTMENT OF INSURANCE
AUTOMOBILE INSURANCE FRAUD
GRANT PROGRAM
INDEPENDENT AUDITOR'S REPORT
FOR THE FISCAL YEAR ENDED JUNE 30, 2021**

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www.romeo-cpa.com**

**NAPA COUNTY
DISTRICT ATTORNEY
CALIFORNIA DEPARTMENT OF INSURANCE
AUTOMOBILE INSURANCE FRAUD GRANT PROGRAM**

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INDEPENDENT AUDITOR'S REPORT

Allison Haley
District Attorney
Napa County
Napa, California

We have audited the accompanying schedule of Grant Revenue and Expenditures of the Napa County Office of the District Attorney for the Automobile Insurance Grant Program funded by the California Department of Insurance as of June 30, 2021 and the related schedule of eligible costs Budget to Actual claimed for the contract period July 1, 2020 June 30, 2021. These schedules are the responsibility of the Napa County Office of the District Attorney. Our responsibility is to express an opinion on these schedules based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America, and section 1872.8 of the State of California Insurance Code. Those standards and instructions require that we plan and perform the audit to obtain reasonable assurance about whether the schedules are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the schedules. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the schedules referred to in the first paragraph present fairly, in all material respects, of the Napa County Office of the District Attorney for the Automobile Insurance Fraud Grant Program funded by the California Department of Insurance and the related schedule of expenditures claimed for the contract period July 1, 2020 to June 30, 2021, in conformity with standards and instructions issued by the Department of Insurance for the State of California.

In accordance with *Government Auditing Standards*, we have also issued a report dated September 8, 2021 on our consideration of the Automobile Insurance Fraud Grant Program allocated to the Office of the District Attorney's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is 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 internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Romeo C. Blanquera, CPA Inc.

Romeo C. Blanquera, CPA Inc. Inc
September 8, 2021

**NAPA COUNTY
DISTRICT ATTORNEY'S OFFICE
AUTOMOBILE INSURANCE FRAUD GRANT PROGRAM
SCHEDULE OF GRANT REVENUES AND EXPENDITURES**

FOR THE FISCAL YEAR ENDED, JUNE 30, 2021

Grant Revenues:

Grant funds received during the grant period	\$ 39,633
Total cash available during the grant period	39,633
Grant funds received after the grant period	-
Grant funds receivable after the grant period	7,334
Total grant funds received	<u>\$ 46,967</u>

Disbursements:

Salaries and benefits	\$ 25,561
Operating Expenses and Administrative Overhead	
Training, Travel & Vehicle Expenses	550
Information Technology, Records & Communication	1,355
General Operating Supplies/Copier, Liability Ins & Bldg Maintenance	966
Audit Costs	3,000
Administrative Costs	1,727
Total Operating	7,598
Equipment	-
Total disbursements	<u>\$ 33,159</u>

Unexpended Funds

Total contracted grant funds	\$ 46,967
Total disbursements	<u>33,159</u>
Total unexpended grant funds	<u>\$ 13,808</u>

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

NAPA COUNTY
DISTRICT ATTORNEY'S OFFICE
CALIFORNIA DEPARTMENT OF INSURANCE
AUTOMOBILE INSURANCE FRAUD PROGRAM

SCHEDULE OF ELIGIBLE COSTS
BUDGET TO ACTUAL
FOR THE FISCAL YEAR ENDED, JUNE 30, 2021

<u>Budget Category</u>	<u>Current Budget</u>	<u>Eligible Costs</u>	<u>Variance</u>
Personnel Services	\$ 37,171	\$ 37,171	\$ -
Travel, Training & Vehicle Expenses	2,799	2,799	-
Info. Tech, Records & Communication	1,684	1,684	-
Gen Operating Supplies, Copier, etc.	1,323	1,323	-
Audit Expense	2,000	2,000	-
Administrative Overhead	1,990	1,990	-
Equipment	-	\$ -	\$ -
	<u>-</u>	<u>\$ -</u>	<u>\$ -</u>
Total	<u>\$ 46,967</u>	<u>\$ 46,967</u>	<u>\$ -</u>

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

NAPA COUNTY
DISTRICT ATTORNEY'S OFFICE
CALIFORNIA DEPARTMENT OF INSURANCE
AUTOMOBILE INSURANCE FRAUD GRANT PROGRAM
NOTES TO FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED, JUNE 30, 2021

NOTE 1: PROGRAM DESCRIPTION

The Napa County Office of the District Attorney, entered into the Automobile Insurance Fraud Grant Program with the California Department of Insurance for the period of July 1, 2020 to June 30, 2021. The grant award is made pursuant to section 1872.8 of California Insurance Code and is used for the purposes of enhanced investigation and prosecution of automobile insurance fraud.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Financial Statement Presentation

The Financial Statements are prepared in accordance with the method of accounting suggested by the State of California Department of Insurance. The Financial Statements present the information requested by the Department of Insurance and therefore do not purport to reflect the financial position or results of operation of the Napa County District Attorney's Office in accordance with Generally Accepted Accounting Principles accepted in the United States of America.

B. Basis of Accounting

The grant utilizes the current financial resources measurement focus and the modified accrual basis of accounting. Under the modified accrual basis of accounting, increases and decreases in financial resources are recognized only to the extent that they reflect near-term inflows and outflows of cash. Revenues are recognized when earned. Expenditures are generally recognized when the related liability is incurred.

NOTE 3: GRANT SOURCE AND STATUS OF FUNDS:

Distribution to June 30, 2021	\$ 39,633
Distribution after June 30, 2021	\$ -
Receivable after June 30, 2021	<u>\$ 7,334</u>
Total fund distribution of current year grant	<u>\$ 46,967</u>

The Department of Insurance sets forth certain procedures in the request for application program. According to funding procedures, any portion of distributed funds not used for local program purposes at the termination of each annual funding cycle, within thirty (30) days after the completion of the final audit, unused funds shall be transferred back to the insurance fund. the Commissioner how the funds will be used at the end of the program period and at the time of the subsequent application.

NOTE 4: ACCOUNTS AND RECORDS

The Napa County Office of the District Attorney receives funds from California Department of Insurance. These funds are deposited to the Office of the District Attorney's Program account with the Napa County Treasurer-Tax Collector Department.

NOTE 5: FUNDING AMOUNTS

The amount of the grant payments from the Department of Insurance is based on the amount of funds available for disbursement. These funds are based on the annual fee to be determined by the Insurance Commissioner, not to exceed one dollar (\$1) annually, for each vehicle insured within the State of California. Fifty five percent (55%) of the assessment after incidental expenses is available for distribution to District Attorneys. Consequently, the amounts are estimates until actual payment is received by the District Attorney's office. For this grant period, the grant amount is \$46,967.

NOTE 6: PERSONNEL

Personnel time charges to the Program is appropriately certified. Expenses charged to the program are limited to personnel funded by the grant.

NOTE 7: EQUIPMENT PURCHASES

Equipment purchases are only for items specifically approved by the California Department of Insurance in the budget and are in the custody of the grant unit. For this grant period, equipment purchased total \$0.

NOTE 8: AUTOMOBILE PURCHASES

Vehicles charged to the program have been approved by the California Department of Insurance. For this grant period, there were no automobile purchased

NOTE 9: COUNTY POLICIES AND PROCEDURES

Napa County policies and procedures were used as the standard for verifying the appropriateness of personnel and support costs.



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

Allison Haley
District Attorney
Napa County
Napa, California

We have audited the schedule of status of cash of the Napa County Office of the District Attorney for the Automobile Insurance Fraud Grant Program funded by the California Department of Insurance as of June 30, 2021 and the related schedule of expenditures claimed for the contract period then ended and have issued our report thereon dated September 8, 2021. 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.

Internal Control Over Financial Reporting

In planning and performing the audit, we considered Automobile Insurance Fraud Grant Program allocated to the Office of the District Attorney's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Automobile Insurance Fraud Grant Program allocated to the Office of the District Attorney's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of Automobile Insurance Fraud Grant Program allocated to the Office of the District Attorney's internal control over financial reporting.

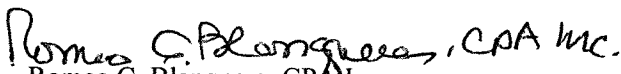
A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination 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.

Our consideration of the internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and other Matters

As part of obtaining reasonable assurance about whether the Automobile Insurance Fraud Grant Program's financial schedules are free of 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 determination of financial schedules amounts. 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*.

This report is intended solely for the information of the Napa County District Attorney, management of the program and awarding agency and is not intended to be and should not be used by anyone other than the specified parties.


Romeo C. Blanquera, CPA Inc.
September 8, 2021

**NAPA COUNTY
DISTRICT ATTORNEY
CALIFORNIA DEPARTMENT OF INSURANCE
WORKERS COMPENSATION INSURANCE FRAUD
GRANT PROGRAM
INDEPENDENT AUDITOR'S REPORT
FOR THE FISCAL YEAR ENDED JUNE 30, 2021**

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NAPA COUNTY
DISTRICT ATTORNEY
CALIFORNIA DEPARTMENT OF INSURANCE
WORKERS COMPENSATION INSURANCE FRAUD
GRANT PROGRAM

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INDEPENDENT AUDITOR'S REPORT

Allison Haley
District Attorney
Napa County
Napa, California

We have audited the accompanying schedule of Grant Revenue and Expenditures of the Napa County Office of the District Attorney for the Workers Comp Insurance Fraud Grant Program funded by the California Department of Insurance as of June 30, 2021 and the related schedule of eligible costs Budget to Actual claimed for the contract period July 1, 2020 to June 30, 2021. These schedules are the responsibility of the Office of the District Attorney. Our responsibility is to express an opinion on these schedules based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America, and section 1872.8 of the State of California Insurance Code. Those standards and instructions require that we plan and perform the audit to obtain reasonable assurance about whether the schedules are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the schedules. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the schedules referred to in the first paragraph present fairly, in all material respects, of the Napa County Office of the District Attorney for the Workers Comp Insurance Fraud Grant Program funded by the California Department of Insurance and the related schedule of expenditures claimed for the contract period July 1, 2020 to June 30, 2021, in conformity with standards and instructions issued by the Department of Insurance for the State of California.

In accordance with *Government Auditing Standards*, we have also issued a report dated September 8, 2021, on our consideration of the Workers Comp Insurance Fraud Grant Program allocated to the Office of the District Attorney's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is 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 internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

Romeo C. Blanquera, CPA Inc.
Romeo C. Blanquera, CPA Inc. Inc
September 8, 2021

**NAPA COUNTY
DISTRICT ATTORNEY'S OFFICE
WORKERS COMP INSURANCE FRAUD GRANT PROGRAM
SCHEDULE OF GRANT REVENUES AND EXPENDITURES**

FOR THE FISCAL YEAR ENDED, JUNE 30, 2021

Grant Revenues:

Grant funds received during the grant period	\$ 127,562
Total cash available during the grant period	<u>127,562</u>
Grant funds received after the grant period	-
Grant funds receivable after the grant period	<u>41,322</u>
Total grant funds received	<u>\$ 168,884</u>

Disbursements:

Salaries and benefits	\$ 119,099
Operating Expenses and Administration	
Training, Travel & Vehicle Expenses	1,487
Information Technology, Records & Communication	4,482
General Operating Supplies/Copier, Liability Ins & Bldg Maintenance	3,195
Outreach Expenses	518
Audit Costs	3,000
Administrative Costs	<u>5,369</u>
Total Operating and Administrative Overhead	18,051
Equipment	<u>-</u>
Total disbursements	<u>\$ 137,150</u>

Unexpended Funds

Total contracted grant funds	\$ 168,884
Total disbursements	<u>137,150</u>
Total unexpended grant funds	<u>\$ 31,734</u>

The accompanying notes are an integral part of these financial schedules

NAPA COUNTY
DISTRICT ATTORNEY'S OFFICE
CALIFORNIA DEPARTMENT OF INSURANCE
WORKERS COMP INSURANCE FRAUD GRANT PROGRAM

SCHEDULE OF ELIGIBLE COSTS
BUDGET TO ACTUAL
FOR THE FISCAL YEAR ENDED, JUNE 30, 2021

<u>Budget Category</u>	<u>Current Budget</u>	<u>Eligible Costs</u>	<u>Variance</u>
Personnel Services	\$ 140,067	\$ 140,067	-
Travel, Training & Vehicle Expenses	3,369	3,369	-
Info. Tech, Records & Communication	7,505	7,505	-
General Operating Supplies, Leases, etc	5,559	5,559	-
Outreach Expenses	2,000	2,000	-
Audit Expense	3,000	3,000	-
Administrative Overhead	7,384	7,384	-
Equipment	-	-	-
Total	<u>\$ 168,884</u>	<u>\$ 168,884</u>	<u>\$ -</u>

The accompanying notes are an integral part of these financial schedules

**NAPA COUNTY
DISTRICT ATTORNEY'S OFFICE
CALIFORNIA DEPARTMENT OF INSURANCE
WORKERS COMP INSURANCE FRAUD GRANT PROGRAM
NOTES TO FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED, JUNE 30, 2021**

NOTE 1: PROGRAM DESCRIPTION

The Napa County Office of the District Attorney, entered into the Workers Comp Insurance Fraud Grant Program with the California Department of Insurance for the period of July 1, 2020 to June 30, 2021. The grant award is made pursuant to section 1872.8 of California Insurance Code and is used for the purpose of enhanced investigation and prosecution of workers comp insurance fraud.

NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Financial Statement Presentation

The Financial Statements are prepared in accordance with the method of accounting suggested by the State of California Department of Insurance. The Financial Statements present the information requested by the Department of Insurance and therefore do not purport to reflect the financial position or results of operation of the Napa County District Attorney's Office in accordance with Generally Accepted Accounting Principles accepted in the United States of America.

B. Basis of Accounting

The grant utilizes the current financial resources measurement focus and the modified accrual basis of accounting. Under the modified accrual basis of accounting, increases and decreases in financial resources are recognized only to the extent that they reflect near-term inflows and outflows of cash. Revenues are recognized when earned. Expenditures are generally recognized when the related liability is incurred.

NOTE 3: GRANT SOURCE AND STATUS OF FUNDS:

Distribution to June 30, 2021	\$ 127,562
Distribution after June 30, 2021	\$ -
Receivable after June 30, 2021	<u>\$ 41,322</u>
Total fund distribution of current year grant	<u>\$ 168,884</u>

The Department of Insurance sets forth certain procedures in the request for application program. According to funding procedures, any portion of distributed funds not used for local program purposes at the termination of each annual funding cycle, within thirty (30) days after the completion of the final audit, unused funds shall be transferred back to the insurance fund, the Commissioner how the funds will be used at the end of the program period and at the time of the subsequent application.

NOTE 4: ACCOUNTS AND RECORDS

The Napa County Office of the District Attorney receives funds from California Department of Insurance. These funds are deposited to the Office of the District Attorney's Program account with the Napa County Treasurer-Tax Collector Department.

NOTE 5: FUNDING AMOUNTS

The amount of the grant payments from the Department of Insurance is based on the amount of funds available for disbursement. These funds are based on the annual fee to be determined by the Insurance Commissioner, not to exceed one dollar (\$1) annually, for each vehicle insured within the State of California. Fifty five percent (55%) of the assessment after incidental expenses is available for distribution to District Attorneys. Consequently, the amounts are estimates until actual payment is received by the District Attorney's office. For this grant period, the grant amount is \$168,884.

NOTE 6: PERSONNEL

Personnel time charges to the Program is appropriately certified. Expenses charged to the program are limited to personnel funded by the grant.

NOTE 7: EQUIPMENT PURCHASES

Equipment purchases are only for items specifically approved by the California Department of Insurance in the budget and are in the custody of the grant unit. For this grant period, equipment purchased total \$0.

NOTE 8: AUTOMOBILE PURCHASES

Vehicles charged to the program have been approved by the California Department of Insurance. For this grant period, there were no automobile purchased

NOTE 9: COUNTY POLICIES AND PROCEDURES

Napa County policies and procedures were used as the standard for verifying the appropriateness of personnel and support costs.



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

Allison Haley
District Attorney
Napa County
Napa, California

We have audited the schedule of Grant Revenues and Expenditures of the Napa County Office of the District Attorney for the Workers Comp Insurance Fraud Grant Program funded by the California Department of Insurance as of June 30, 2021 and the related schedule of Eligible Costs Budget to Actual for the contract period then ended and have issued our report thereon dated September 8, 2021. 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.

Internal Control Over Financial Reporting

In planning and performing the audit, we considered Workers Comp Insurance Fraud Grant Program allocated to the Office of the District Attorney's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of Workers Comp Insurance Fraud Grant Program allocated to the Office of the District Attorney's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of Workers Comp Insurance Fraud Grant Program allocated to the Office of the District Attorney's internal control over financial reporting.

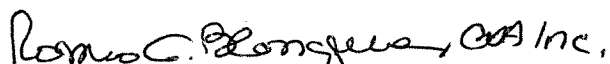
A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination 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.

Our consideration of the internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Compliance and other Matters

As part of obtaining reasonable assurance about whether the Workers Comp Insurance Fraud Grant Program's financial schedules are free of 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 determination of financial schedules amounts. 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*.

This report is intended solely for the information of the District Attorney, management of the program and awarding agency and is not intended to be and should not be used by anyone other than the specified parties.


Romeo C. Blanquera, CPA Inc.
September 8, 2021



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-976

TO: Board of Supervisors
FROM: Allison Haley - District Attorney
REPORT BY: Sophie Johnson - Staff Services Manager
SUBJECT: Application and Acceptance of Funding for Unserved/Underserved Victim Advocacy and Outreach Program

RECOMMENDATION

District Attorney requests approval of and authorization for the Chair to sign a Certification of Assurance of Compliance document that authorizes the District Attorney to apply for and sign grant Subaward documents with the California Office of Emergency Services for the Unserved/Underserved Victim Advocacy and Outreach (UV) Program in the anticipated amount of \$360,920 for the term of January 1, 2022 through December 31, 2022.

EXECUTIVE SUMMARY

Approval of the recommended action will allow the District Attorney to apply for and sign grant subaward documents, including amendments, extensions, and modifications, thereof, for continuation of the County Unserved/Underserved Victim Advocacy and Outreach (UV) Program. This subaward program, administered by the California Office of Emergency Services, provides Victims of Crime Act (VOCA) funding for continued services to crime victims and witnesses throughout the County.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	District Attorney
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	This item is discretionary as there is no mandate for the District Attorney's office to provide additional local services above the mandatory victim services handled through the Victim/Witness Assistance Program

Is the general fund affected?	Yes
Future fiscal impact:	Appropriations have been included in the District Attorney's budget for Fiscal Year 2021-2022 and appropriations for future fiscal years will be budgeted accordingly
Consequences if not approved:	If this item is not approved, the District Attorney will not be able to obtain continued funding from the State of California for the provision of additional local services for Victims of Crime.
County Strategic Plan pillar addressed:	Healthy, Safe, and Welcoming Place to Live, Work, and Visit

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: 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.

BACKGROUND AND DISCUSSION

California Penal Code Sections 13835 through 13835.10 mandate that every county in the State of California be provided funding for comprehensive services for victims and witnesses. Funding is designed to help victims and witnesses of all types of crime by maintaining local centers that provide comprehensive assistance, including all legislatively mandated services. The District Attorney's Office began providing victim witness services in Fiscal Year 2010-2011. The Victim Services Division currently operates with funding provided primarily by grant subaward programs administered by the California Office of Emergency Services. Increased funding allocated under the federal Victims of Crime Act (VOCA) allows for expanded services to targeted populations. The Unserved/Underserved Victim Advocacy and Outreach (UV) Program grant provides funding for to assist victims of crime in the Latino and older adult, elder and dependent adult victims of crime in the County.

Victim Witness Programs are required to perform 14 mandatory services: crisis intervention, emergency assistance, resource and referral assistance, direct counseling, victim of crime claims, property return, orientation to the criminal justice system, court escort, presentations and training to local criminal justice agencies, public presentations and publicity, case status and case dispositions, notification to family and friends, employer notification and intervention, and assistance with restitution. The following 10 optional services may be provided if they do not preclude the efficient provision of mandatory services: employer intervention, creditor intervention, child care, notification to witnesses of any change in the court calendar, funeral arrangements, crime prevention information, witness protection, assistance in obtaining temporary restraining orders, transportation, and provision of a waiting area during court proceedings separate from defendants and families and friends of defendants. The Victim Witness Program staff offers and provides mandated and optional services to an average of 1,500 victims each fiscal year. The Unserved/Underserved Victim Advocacy and Outreach (UV) Program grant subawards provide VOCA funding for the Victim Witness Program Manager and two full time Victim Witness Advocates to provide targeted services to vulnerable older adults and dependent adults, as well as to Latino crime victims to enable improved access to services that are culturally and linguistically appropriate for this population.

The County's anticipated funding level for continuation of the Unserved/Underserved Victim Advocacy and Outreach Program targeted to serve Latino victims of crime for the funding cycle of January 1, 2022 through December 31, 2022 is \$360,920. Today's recommended action will authorize the Chair to sign the Certificate of Assurance of Compliance (COAOC) documents, which authorizes the District Attorney to apply and sign for these grant subawards, including acceptance of additional funding, extensions, modifications or amendments thereof.



Grant Subaward Certification of Assurance of Compliance

Information and Instructions

The Certification of Assurance of Compliance is a binding affirmation that Subrecipients will comply with the following regulations and restrictions:

- State and federal civil rights laws,
- Drug-Free Workplace,
- California Environmental Quality Act,
- Lobbying restrictions,
- Debarment and Suspension requirements,
- Proof of Authority documentation from the city council/governing board, and
- Federal grant fund requirements.

The Applicant is required to obtain written authorization by the governing body (e.g., County Board of Supervisors, City Council, or Governing Board) granting authority for the Subrecipient/Official Designee to enter into a Grant Subaward (and applicable Grant Subaward Amendments) with Cal OES (see Subrecipient Handbook (SRH) Section 1.005 and Section IV. of this form).

The Official Designee (see SRH Section 3.030) and the individual granting that authority (i.e., City/County Financial Officer, City/County Manager, or Governing Board Chair) must sign this form. For State agencies, only the Official Designee must sign this form.

Complete all sections of this form and then submit:

- As part of the Grant Subaward Application,
- With a Grant Subaward Amendment (Cal OES Form 2-213) if a new fund source is being added to the Grant Subaward, (applicable Certification of Assurance of Compliance would be needed), with a Grant Subaward Modification (Cal OES Form 2-223) if the Official Designee or Board Chair changes and the Resolution identifies them by name, and/or
- With a Grant Subaward Modification (Cal OES Form 2-223) if the federal program Special Conditions change after the approval of the Grant Subaward.



Grant Subaward Certification of Assurance of Compliance
Victims of Crime Act (VOCA) Victim Assistance Formula Grant Program

Grant Subaward #: _____

Subrecipient: _____

I, _____ (Official Designee; same person as Section 15 of the Grant Subaward Face Sheet) hereby certify that the above Subrecipient is responsible for reviewing the Subrecipient Handbook (SRH) and adhering to all of the Grant Subaward requirements (state and/or federal) as directed by Cal OES including, but not limited to, the following areas:

I. Federal Grant Funds – SRH Sections 14.005

Subrecipients expending \$750,000 or more in federal grant funds annually are required to secure a single audit pursuant to Office of Management & Budget (OMB) Uniform Guidance 2 Code of Federal Regulations (CFR) Part 200, Subpart F and are allowed to allocate federal funds for the audit costs.

- ☐ Subrecipient expends \$750,000 or more in federal funds annually.
- ☐ Subrecipient does not expend \$750,000 or more in federal funds annually

II. Equal Employment Opportunity – SRH Section 2.025

It is the public policy of the State of California to promote equal employment opportunity (EEO) by prohibiting discrimination or harassment in employment because of race, color, religion, religious creed (including religious dress and grooming practices), national origin, ancestry, citizenship, physical or mental disability, medical condition (including cancer and genetic characteristics), genetic information, marital status, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity, gender expression, age, sexual orientation, veteran and/or military status, protected medical leaves (requested or approved for leave under the Family and Medical Leave Act or the California Family Rights Act), domestic violence victim status, political affiliation, and any other status protected by state or federal law.

Subrecipients certify that they will comply with all state and federal requirements regarding EEO, nondiscrimination, and civil rights.

EEO Officer: _____

Title: _____

Address: _____

Telephone Number: _____

Email Address: _____

III. Drug-Free Workplace Act of 1990 – SRH Section 2.030

The State of California requires that every person or organization receiving a Grant Subaward or contract shall certify it will provide a drug-free workplace.

IV. California Environmental Quality Act (CEQA) – SRH Section 2.035

The California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000 et seq.) requires all Cal OES-funded Subrecipients to certify compliance with CEQA. Subrecipients must certify they have completed, and will maintain on file, the appropriate CEQA compliance documentation.

V. Lobbying – SRH Sections 2.040 and 4.105

Grant Subaward funds, property, and funded positions must not be used for any lobbying activities. This includes, but is not limited to, being paid by or on behalf of the undersigned, 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 the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

VI. Debarment and Suspension – SRH Section 2.045

Subrecipients receiving federal funds must certify that they will adhere to Federal Executive Order 12549, Debarment and Suspension. The Subrecipient certifies that neither the Subrecipient nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency.

The Subrecipient certifies that it will not make any Second-Tier Subaward, or enter into any contract greater than \$25,000, with parties that are debarred, suspended, or otherwise excluded or ineligible for participation in Federal programs or activities.

VII. Proof of Authority from City Council/Governing Board – SRH Section 1.055

Subrecipients accept responsibility for and must comply with the requirement to obtain a signed resolution from governing body (e.g., County Board of Supervisors, City Council, or Governing Board) granting authority for the Subrecipient/Official Designee (see Section 3.030) to enter into a Grant Subaward (and applicable Grant Subaward Amendments) with Cal OES. It is agreed that any liability arising out of the performance of this Grant Subaward, including civil court actions for damages, shall be the responsibility of the Subrecipient. The State of California and Cal OES disclaim responsibility of any such liability. Furthermore, it is also

agreed that Grant Subaward funds received from Cal OES shall not be used to supplant expenditures controlled by the governing board.

Subrecipients are required to obtain written authorization by the governing body (e.g., County Board of Supervisors, City Council, or Governing Board) granting authority for the Subrecipient/Official Designee (see Section 3.030) to enter into a Grant Subaward (and applicable Grant Subaward Amendments) with Cal OES. The Applicant is also required to maintain said written authorization on file and make readily available upon demand.

VIII. Civil Rights Compliance – SRH Section 2.020

The Subrecipient complies with all laws that prohibit excluding, denying or discriminating against any person based on actual or perceived race, color, national origin, disability, religion, age, sex, gender identity, and sexual orientation in both the delivery of services and employment practices and does not use federal financial assistance to engage in explicitly religious activities.

IX. Federal Victims of Crime Act (VOCA) Victim Assistance Formula Grant Program Special Conditions

1. Applicability of Part 200 Uniform Requirements

The Subrecipient must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and Subawards ("Subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the Subrecipient must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the Subrecipient must provide access, include performance measurement information, in addition to

the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the Subrecipient is to contact OJP promptly for clarification.

2. Compliance with DOJ Grants Financial Guide

The Subrecipient must to comply with the DOJ Grants Financial Guide. References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance.

3. Requirements Pertaining to Prohibited Conduct Related to Trafficking in Persons (including reporting requirements and OJP authority to terminate award)

The Subrecipient must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of Subrecipients, Subrecipients ("Subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the Subrecipient or of any Subrecipient.

The details of the Subrecipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by Subrecipients and Subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

4. Requirements related to System for Award Management and Universal Identifier Requirements

The Subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The Subrecipient also must comply with applicable restrictions on Second-Tier Subawards, including restrictions on subawards to entities that do not acquire and provide (to the Subrecipient) the unique entity

identifier required for SAM registration.

The details of the Subrecipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

5. Compliance with Applicable Rules Regarding Approval, Planning, and Reporting of Conferences, Meetings, Trainings, and Other Events

The Subrecipient must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

6. Compliance with General Appropriations-Law Restrictions on the Use of Federal Funds

The Subrecipient must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes.

Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2018, are set out at <https://ojp.gov/funding/Explore/FY18AppropriationsRestrictions.htm>, and are incorporated by reference here.

Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2019, are set out at <https://ojp.gov/funding/Explore/FY19AppropriationsRestrictions.htm>, and are incorporated by reference here.

Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2020, are set out at <https://ojp.gov/funding/Explore/FY20AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a Subrecipient would or might fall within the scope of an appropriations-law restriction, the Subrecipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

7. Reporting Potential Fraud, Waste, & Abuse

The Subrecipient must promptly refer to DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, Subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 1425 New York Avenue, N.W. Suite 7100, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Fraud Detection Office (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

8. Restrictions and Certifications Regarding Non-Disclosure Agreements and Related Matters

No Subrecipient under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

a. In accepting this award, the Subrecipient:

- Represents that it neither requires nor has required internal confidentiality agreements or statements from employees or

contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

- Certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.
- b. If the Subrecipient does or is authorized under this award to make Subawards, procurement contracts, or both:
- It represents that (1) it has determined that no other entity that the Subrecipient's application proposes may or will receive award funds (whether through a Subaward, procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and (2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and
 - It certifies that, if it learns or is notified that any Subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

9. Encouragement of Policies to Ban Text Messaging while Driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Subrecipient understands that DOJ encourages Subrecipients to adopt

and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

10. OJP Training Guiding Principles

Any training or training materials that the Subrecipient develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm>.

11. Requirement to report actual or imminent breach of personally identifiable information (PII)

The Subrecipient must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it – (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The Subrecipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

12. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$150,000 (for 2018 federal award) or \$250,000 (for 2019 & 2020 federal awards)

The Subrecipient must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (\$150,000 [for 2018 federal award] currently, \$250,000 [for 2019 & 2020 federal awards]). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a Subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$150,000 [for 2018 federal award] and exceed \$250,000 [for 2019 & 2020 federal

award]], and are incorporated by reference here.

13. Requirement for Data on Performance and Effectiveness Under the Award

The Subrecipient must collect and maintain data that measure the performance and effectiveness of activities under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act, and other applicable laws.

14. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The Subrecipient must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The Subrecipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the Subrecipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

15. VOCA Requirements

The Subrecipient must comply with the conditions of the Victims of Crime Act (VOCA) of 1984, sections 1404(a)(2), and 1404(b)(1) and (2), 34 U.S.C. 20103(a)(2) and (b)(1) and (2) (and the applicable program guidelines and regulations), as required.

16. Demographic Data

The Subrecipient must collect and maintain information on race, sex, national origin, age, and disability of victims receiving assistance, where such information is voluntarily furnished by the victim.

17. Performance Reports

The Subrecipient must submit quarterly performance reports on the performance metrics identified by OVC, and in the manner required by OVC. This information on the activities supported by the award funding will assist in assessing the effects that VOCA Victim Assistance funds have had on services to crime victims within the jurisdiction.

18. Access to Records

The Subrecipient must authorize the Office for Victims of Crime (OVC) and/or the Office of the Chief Financial Officer (OCFO), and its representatives, access to and the right to examine all records, books, paper, or documents related to the VOCA grant.

19. All Subawards ("Subgrants") must have specific federal authorization

The Subrecipient must comply with all applicable requirements for authorization of any Subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "Subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any Subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All Subawards ("Subgrants") must have specific federal authorization), and are incorporated by reference here.

20. Unreasonable restrictions on competition under the award; association with federal government

This condition applies with respect to any procurement of property or services that is funded (in whole or in part) by this award regardless of the dollar amount of the purchase or acquisition, the method of procurement, or the nature of any legal instrument used.

a. No discrimination, in procurement transactions, against associates of the federal government

Consistent with the (DOJ) Part 200 Uniform Requirements -- including as set out at 2 C.F.R. 200.300 (requiring awards to be "manage[d] and administer[ed] in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements") and 200.319(a) (generally requiring "[a]ll procurement transactions [to] be conducted in a manner providing full and open competition" and forbidding practices "restrictive of competition," such as "[p]lacing unreasonable

requirements on firms in order for them to qualify to do business" and taking "[a]ny arbitrary action in the procurement process") -- no Subrecipient may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ.

b. Monitoring

The Subrecipient's monitoring responsibilities include monitoring of compliance with this condition.

c. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

d. Rules of construction

- 1) The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government -- as an employee, contractor or subcontractor, grant Subrecipient or - Subrecipient, agent, or otherwise -- in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.
- 2) Nothing in this condition shall be understood to authorize or require any Subrecipient or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

21. Determination of suitability to interact with participating minors

This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ, the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award is to benefit a set of individuals under 18 years of age.

The Subrecipient must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

22. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination – 28 C.F.R. Part 42

The Subrecipient must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

23. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The Subrecipient must comply with all applicable requirements of 28

C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

24. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The Subrecipient must comply with all applicable requirements of 28

C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to

Subrecipient organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to Subrecipients and Subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi->

bin/ECFR?page=browse), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

25. Restrictions on "Lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the Subrecipient, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the Subrecipient to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, Subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a Subrecipient would or might fall within the scope of these prohibitions, the Subrecipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

26. Subgrant Award Report (SAR)

The Subrecipient must submit a SAR to OVC for each Subrecipient of the VOCA victim assistance funds, within ninety (90) days of awarding funds to the Subrecipient. Subrecipients must submit this information through the automated system.

27. Effect of Failure to Address Audit Issues

The Subrecipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the Subrecipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this Grant Subaward), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

28. Additional DOJ Awarding Agency Requirements (2018, 2019, & 2020)

The Subrecipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the Subrecipient is designated as "high- risk" for purposes of the DOJ high-risk grantee list.

29. Hiring Documents

The Subrecipient must keep, maintain, and preserve all documentation (such as Form I-9s or equivalents) regarding the eligibility of employees hired using the fund.

All appropriate documentation must be maintained on file by the Subrecipient and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the Subrecipient may be ineligible for Subaward of any future grants if the Cal OES determines that any of the following has occurred: (1) the Subrecipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

CERTIFICATION	
<p>I, the official named below, am the same individual authorized to sign the Grant Subaward [Section 15 on Grant Subaward Face Sheet], and hereby swear that I am duly authorized legally to bind the contractor or grant Subrecipient to the above described certification. I am fully aware that this certification, executed on the date and in the county below, is made under penalty of perjury under the laws of the State of California.</p>	
<p>Official Designee's Signature: _____</p>	
<p>Official Designee's Typed Name: _____</p>	
<p>Official Designee's Title: _____</p>	
<p>Date Executed: _____</p>	
<p>Federal Employer ID #: _____ Federal DUNS #: _____</p>	
<p>Current System for Award Management (SAM) Expiration Date: _____</p>	
<p>Executed in the City/County of: _____</p>	
AUTHORIZED BY:	
<p>City Financial Officer</p> <p>City Manager</p> <p>Governing Board Chair</p>	<p>County Financial Officer</p> <p>County Manager</p>
<p>Signature: _____</p>	
<p>Typed Name: _____</p>	
<p>Title: _____</p>	



Grant Subaward Certification of Assurance of Compliance

Information and Instructions

The Certification of Assurance of Compliance is a binding affirmation that Subrecipients will comply with the following regulations and restrictions:

- State and federal civil rights laws,
- Drug-Free Workplace,
- California Environmental Quality Act,
- Lobbying restrictions,
- Debarment and Suspension requirements,
- Proof of Authority documentation from the city council/governing board, and
- Federal grant fund requirements.

The Applicant is required to obtain written authorization by the governing body (e.g., County Board of Supervisors, City Council, or Governing Board) granting authority for the Subrecipient/Official Designee to enter into a Grant Subaward (and applicable Grant Subaward Amendments) with Cal OES (see Subrecipient Handbook (SRH) Section 1.005 and Section IV. of this form).

The Official Designee (see SRH Section 3.030) and the individual granting that authority (i.e., City/County Financial Officer, City/County Manager, or Governing Board Chair) must sign this form. For State agencies, only the Official Designee must sign this form.

Complete all sections of this form and then submit:

- As part of the Grant Subaward Application,
- With a Grant Subaward Amendment (Cal OES Form 2-213) if a new fund source is being added to the Grant Subaward, (applicable Certification of Assurance of Compliance would be needed), with a Grant Subaward Modification (Cal OES Form 2-223) if the Official Designee or Board Chair changes and the Resolution identifies them by name, and/or
- With a Grant Subaward Modification (Cal OES Form 2-223) if the federal program Special Conditions change after the approval of the Grant Subaward.



Grant Subaward Certification of Assurance of Compliance

Victims of Crime Act (VOCA) Victim Assistance Formula Grant Program

Grant Subaward #: _____

Subrecipient: _____

I, _____ (Official Designee; same person as Section 15 of the Grant Subaward Face Sheet) hereby certify that the above Subrecipient is responsible for reviewing the Subrecipient Handbook (SRH) and adhering to all of the Grant Subaward requirements (state and/or federal) as directed by Cal OES including, but not limited to, the following areas:

I. Federal Grant Funds – SRH Sections 14.005

Subrecipients expending \$750,000 or more in federal grant funds annually are required to secure a single audit pursuant to Office of Management & Budget (OMB) Uniform Guidance 2 Code of Federal Regulations (CFR) Part 200, Subpart F and are allowed to allocate federal funds for the audit costs.

- ☐ Subrecipient expends \$750,000 or more in federal funds annually.
- ☐ Subrecipient does not expend \$750,000 or more in federal funds annually

II. Equal Employment Opportunity – SRH Section 2.025

It is the public policy of the State of California to promote equal employment opportunity (EEO) by prohibiting discrimination or harassment in employment because of race, color, religion, religious creed (including religious dress and grooming practices), national origin, ancestry, citizenship, physical or mental disability, medical condition (including cancer and genetic characteristics), genetic information, marital status, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity, gender expression, age, sexual orientation, veteran and/or military status, protected medical leaves (requested or approved for leave under the Family and Medical Leave Act or the California Family Rights Act), domestic violence victim status, political affiliation, and any other status protected by state or federal law.

Subrecipients certify that they will comply with all state and federal requirements regarding EEO, nondiscrimination, and civil rights.

EEO Officer: _____

Title: _____

Address: _____

Telephone Number: _____

Email Address: _____

III. Drug-Free Workplace Act of 1990 – SRH Section 2.030

The State of California requires that every person or organization receiving a Grant Subaward or contract shall certify it will provide a drug-free workplace.

IV. California Environmental Quality Act (CEQA) – SRH Section 2.035

The California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000 et seq.) requires all Cal OES-funded Subrecipients to certify compliance with CEQA. Subrecipients must certify they have completed, and will maintain on file, the appropriate CEQA compliance documentation.

V. Lobbying – SRH Sections 2.040 and 4.105

Grant Subaward funds, property, and funded positions must not be used for any lobbying activities. This includes, but is not limited to, being paid by or on behalf of the undersigned, 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 the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

VI. Debarment and Suspension – SRH Section 2.045

Subrecipients receiving federal funds must certify that they will adhere to Federal Executive Order 12549, Debarment and Suspension. The Subrecipient certifies that neither the Subrecipient nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency.

The Subrecipient certifies that it will not make any Second-Tier Subaward, or enter into any contract greater than \$25,000, with parties that are debarred, suspended, or otherwise excluded or ineligible for participation in Federal programs or activities.

VII. Proof of Authority from City Council/Governing Board – SRH Section 1.055

Subrecipients accept responsibility for and must comply with the requirement to obtain a signed resolution from governing body (e.g., County Board of Supervisors, City Council, or Governing Board) granting authority for the Subrecipient/Official Designee (see Section 3.030) to enter into a Grant Subaward (and applicable Grant Subaward Amendments) with Cal OES. It is agreed that any liability arising out of the performance of this Grant Subaward, including civil court actions for damages, shall be the responsibility of the Subrecipient. The State of California and Cal OES disclaim responsibility of any such liability. Furthermore, it is also

agreed that Grant Subaward funds received from Cal OES shall not be used to supplant expenditures controlled by the governing board.

Subrecipients are required to obtain written authorization by the governing body (e.g., County Board of Supervisors, City Council, or Governing Board) granting authority for the Subrecipient/Official Designee (see Section 3.030) to enter into a Grant Subaward (and applicable Grant Subaward Amendments) with Cal OES. The Applicant is also required to maintain said written authorization on file and make readily available upon demand.

VIII. Civil Rights Compliance – SRH Section 2.020

The Subrecipient complies with all laws that prohibit excluding, denying or discriminating against any person based on actual or perceived race, color, national origin, disability, religion, age, sex, gender identity, and sexual orientation in both the delivery of services and employment practices and does not use federal financial assistance to engage in explicitly religious activities.

IX. Federal Victims of Crime Act (VOCA) Victim Assistance Formula Grant Program Special Conditions

1. Applicability of Part 200 Uniform Requirements

The Subrecipient must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and Subawards ("Subgrants"), see the OJP website at <https://ojp.gov/funding/Part200UniformRequirements.htm>.

Record retention and access: Records pertinent to the award that the Subrecipient must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the Subrecipient must provide access, include performance measurement information, in addition to

the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the Subrecipient is to contact OJP promptly for clarification.

2. Compliance with DOJ Grants Financial Guide

The Subrecipient must to comply with the DOJ Grants Financial Guide. References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance.

3. Requirements Pertaining to Prohibited Conduct Related to Trafficking in Persons (including reporting requirements and OJP authority to terminate award)

The Subrecipient must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of Subrecipients, Subrecipients ("Subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the Subrecipient or of any Subrecipient.

The details of the Subrecipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by Subrecipients and Subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

4. Requirements related to System for Award Management and Universal Identifier Requirements

The Subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov/>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The Subrecipient also must comply with applicable restrictions on Second-Tier Subawards, including restrictions on subawards to entities that do not acquire and provide (to the Subrecipient) the unique entity

identifier required for SAM registration.

The details of the Subrecipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <https://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

5. Compliance with Applicable Rules Regarding Approval, Planning, and Reporting of Conferences, Meetings, Trainings, and Other Events

The Subrecipient must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

6. Compliance with General Appropriations-Law Restrictions on the Use of Federal Funds

The Subrecipient must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes.

Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2018, are set out at <https://ojp.gov/funding/Explore/FY18AppropriationsRestrictions.htm>, and are incorporated by reference here.

Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2019, are set out at <https://ojp.gov/funding/Explore/FY19AppropriationsRestrictions.htm>, and are incorporated by reference here.

Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2020, are set out at <https://ojp.gov/funding/Explore/FY20AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a Subrecipient would or might fall within the scope of an appropriations-law restriction, the Subrecipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

7. Reporting Potential Fraud, Waste, & Abuse

The Subrecipient must promptly refer to DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, Subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 1425 New York Avenue, N.W. Suite 7100, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Fraud Detection Office (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

8. Restrictions and Certifications Regarding Non-Disclosure Agreements and Related Matters

No Subrecipient under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

a. In accepting this award, the Subrecipient:

- Represents that it neither requires nor has required internal confidentiality agreements or statements from employees or

contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

- Certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.
- b. If the Subrecipient does or is authorized under this award to make Subawards, procurement contracts, or both:
- It represents that (1) it has determined that no other entity that the Subrecipient's application proposes may or will receive award funds (whether through a Subaward, procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and (2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and
 - It certifies that, if it learns or is notified that any Subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

9. Encouragement of Policies to Ban Text Messaging while Driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Subrecipient understands that DOJ encourages Subrecipients to adopt

and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

10. OJP Training Guiding Principles

Any training or training materials that the Subrecipient develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <https://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm>.

11. Requirement to report actual or imminent breach of personally identifiable information (PII)

The Subrecipient must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it – (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The Subrecipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

12. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$150,000 (for 2018 federal award) or \$250,000 (for 2019 & 2020 federal awards)

The Subrecipient must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (\$150,000 [for 2018 federal award] currently, \$250,000 [for 2019 & 2020 federal awards]). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a Subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at <https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> (Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$150,000 [for 2018 federal award] and exceed \$250,000 [for 2019 & 2020 federal

award]], and are incorporated by reference here.

13. Requirement for Data on Performance and Effectiveness Under the Award

The Subrecipient must collect and maintain data that measure the performance and effectiveness of activities under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act, and other applicable laws.

14. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The Subrecipient must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The Subrecipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the Subrecipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

15. VOCA Requirements

The Subrecipient must comply with the conditions of the Victims of Crime Act (VOCA) of 1984, sections 1404(a)(2), and 1404(b)(1) and (2), 34 U.S.C. 20103(a)(2) and (b)(1) and (2) (and the applicable program guidelines and regulations), as required.

16. Demographic Data

The Subrecipient must collect and maintain information on race, sex, national origin, age, and disability of victims receiving assistance, where such information is voluntarily furnished by the victim.

17. Performance Reports

The Subrecipient must submit quarterly performance reports on the performance metrics identified by OVC, and in the manner required by OVC. This information on the activities supported by the award funding will assist in assessing the effects that VOCA Victim Assistance funds have had on services to crime victims within the jurisdiction.

18. Access to Records

The Subrecipient must authorize the Office for Victims of Crime (OVC) and/or the Office of the Chief Financial Officer (OCFO), and its representatives, access to and the right to examine all records, books, paper, or documents related to the VOCA grant.

19. All Subawards ("Subgrants") must have specific federal authorization

The Subrecipient must comply with all applicable requirements for authorization of any Subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "Subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any Subaward are posted on the OJP web site at <https://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award condition: All Subawards ("Subgrants") must have specific federal authorization), and are incorporated by reference here.

20. Unreasonable restrictions on competition under the award; association with federal government

This condition applies with respect to any procurement of property or services that is funded (in whole or in part) by this award regardless of the dollar amount of the purchase or acquisition, the method of procurement, or the nature of any legal instrument used.

a. No discrimination, in procurement transactions, against associates of the federal government

Consistent with the (DOJ) Part 200 Uniform Requirements -- including as set out at 2 C.F.R. 200.300 (requiring awards to be "manage[d] and administer[ed] in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements") and 200.319(a) (generally requiring "[a]ll procurement transactions [to] be conducted in a manner providing full and open competition" and forbidding practices "restrictive of competition," such as "[p]lacing unreasonable

requirements on firms in order for them to qualify to do business" and taking "[a]ny arbitrary action in the procurement process") -- no Subrecipient may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ.

b. Monitoring

The Subrecipient's monitoring responsibilities include monitoring of compliance with this condition.

c. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

d. Rules of construction

- 1) The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government -- as an employee, contractor or subcontractor, grant Subrecipient or - Subrecipient, agent, or otherwise -- in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.
- 2) Nothing in this condition shall be understood to authorize or require any Subrecipient or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

21. Determination of suitability to interact with participating minors

This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ, the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award is to benefit a set of individuals under 18 years of age.

The Subrecipient must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

22. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination – 28 C.F.R. Part 42

The Subrecipient must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

23. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The Subrecipient must comply with all applicable requirements of 28

C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

24. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The Subrecipient must comply with all applicable requirements of 28

C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to

Subrecipient organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to Subrecipients and Subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at <https://www.ecfr.gov/cgi->

bin/ECFR?page=browse), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

25. Restrictions on "Lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the Subrecipient, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the Subrecipient to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, Subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a Subrecipient would or might fall within the scope of these prohibitions, the Subrecipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

26. Subgrant Award Report (SAR)

The Subrecipient must submit a SAR to OVC for each Subrecipient of the VOCA victim assistance funds, within ninety (90) days of awarding funds to the Subrecipient. Subrecipients must submit this information through the automated system.

27. Effect of Failure to Address Audit Issues

The Subrecipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the Subrecipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this Grant Subaward), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

28. Additional DOJ Awarding Agency Requirements (2018, 2019, & 2020)

The Subrecipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the Subrecipient is designated as "high- risk" for purposes of the DOJ high-risk grantee list.

29. Hiring Documents

The Subrecipient must keep, maintain, and preserve all documentation (such as Form I-9s or equivalents) regarding the eligibility of employees hired using the fund.

All appropriate documentation must be maintained on file by the Subrecipient and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the Subrecipient may be ineligible for Subaward of any future grants if the Cal OES determines that any of the following has occurred: (1) the Subrecipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

CERTIFICATION	
<p>I, the official named below, am the same individual authorized to sign the Grant Subaward [Section 15 on Grant Subaward Face Sheet], and hereby swear that I am duly authorized legally to bind the contractor or grant Subrecipient to the above described certification. I am fully aware that this certification, executed on the date and in the county below, is made under penalty of perjury under the laws of the State of California.</p> <p>Official Designee's Signature: _____</p> <p>Official Designee's Typed Name: _____</p> <p>Official Designee's Title: _____</p> <p>Date Executed: _____</p> <p>Federal Employer ID #: _____ Federal DUNS #: _____</p> <p>Current System for Award Management (SAM) Expiration Date: _____</p> <p>Executed in the City/County of: _____</p>	
AUTHORIZED BY:	
<p>City Financial Officer</p> <p>City Manager</p> <p>Governing Board Chair</p>	<p>County Financial Officer</p> <p>County Manager</p>
<p>Signature: _____</p> <p>Typed Name: _____</p> <p>Title: _____</p>	



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-852

TO: Board of Supervisors
FROM: Jennifer Yasumoto, Director Health & Human Services
REPORT BY: JoAnn Melgar, Staff Services Analyst II
SUBJECT: Renewal Agreement with the California Department of Social Services
(Resource Family Approval)

RECOMMENDATION

Director of Health and Human Services requests approval of and authorization for the Chair to sign Renewal Agreement No. 8549 with the California Department of Social Services (CDSS) for the term July 1, 2021 through June 30, 2024 for the purpose of continuing the responsibilities of the CDSS and the County in the provision and receipt of certain services, including legal consultation and legal representation in administrative action appeals associated with the Resource Family Approval (RFA) program.

EXECUTIVE SUMMARY

Approval of this renewal Agreement continues the roles and responsibilities of the California Department of Social Services (CDSS) Legal Division for administrative action appeals associated with the Resource Family Approval program. This Agreement provides that the CDSS Legal Division shall act as the sole legal representative on behalf of the County in the provision of legal consultations and representation on appeals to an RFA Notice of Action. The County is the client and is the final decision maker on decisions affecting the legal rights of the County.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it currently budgeted?	No
Where is it budgeted?	N/A
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	N/A
Is the general fund affected?	No
Future fiscal impact:	N/A
Consequences if not approved:	N/A
County Strategic Plan pillar addressed:	Effective and Open Government

Additional Information

CDSS conducts Family Evaluations, Home Safety Assessments, and Complaint Investigations for small counties that lack sufficient resources to provide these services. Napa County conducts these services internally and does not utilize CDSS resources for these items.

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.

BACKGROUND AND DISCUSSION

The Resource Family Approval (RFA) program was created to provide a unified, family-friendly and child-centered resource family approval process to replace multiple processes for licensing foster homes, approving relatives and non-relative extended family members as foster care providers, and approving adoptive families. The RFA program also establishes a single set of standards for resource family approvals which allow for the safety, permanence and well-being needs of the children who have been victims of child abuse and neglect, reduces the use of congregate care placement settings and decreases the length of time for each child to obtain permanency.

To assume the responsibility for foster home licensing, counties must conform to the rules, regulations and standards for foster home licensing as outlined in Health and Safety Code Chapter 3, the California Community Care Facilities Act. Further, the County must execute a formal Agreement with the California Department of Social Services (CDSS) through the Community Care Licensing (CCL) division.

Approval of the renewal Agreement will continue the role and responsibilities of the CDSS Legal Division for administrative action appeals associated with the Resource Family Approval program. This Agreement is not mandatory. However, an RFA appeal can take up significant time and resources of County Counsel staff. This Agreement provides that the CDSS Legal Division shall act as the sole legal representative on behalf of the County in the provision of legal consultations on appeals to an RFA Notice of Action. The County is the client and is the final decision maker on decisions affecting the legal rights of the County.

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

21-5031

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

Napa County Health and Human Services Agency

CONTRACTOR NAME

California Department of Social Services

2. The term of this Agreement is:

START DATE

07/01/2021

THROUGH END DATE

06/30/2024

3. The maximum amount of this Agreement is:

\$0.00 Zero Dollars and 00/100

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	24
Exhibit A - Attachment 1	General Terms and Conditions	8
Exhibit A - Attachment 2	Information Security Requirements	2
+ - Exhibit A - Attachment 3	State of California Public Liability and Workers Compensation Insurance	1
+ - Exhibit A - Attachment 4	State of California Automobile Liability/Physical Damage	1
+ - Exhibit B	Budget Detail and Payment Provisions	6

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (If other than an individual, state whether a corporation, partnership, etc.)

California Department of Social Services

CONTRACTOR BUSINESS ADDRESS

744 P Street, M.S. 9-6-747

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Marissa Enos

TITLE

Section Chief, Contracts and Purchasing Bureau

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

21-5031

PURCHASING AUTHORITY NUMBER (If Applicable)

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

Napa County Health and Human Services Agency

CONTRACTING AGENCY ADDRESS

2751 Napa Valley Corporate Drive, Building B

CITY

Napa

STATE

CA

ZIP

94558

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

APPROVED AS TO FORM

NAPA COUNTY OFFICE OF COUNTY COUNSEL

BY: [Signature]

DEPUTY COUNTY COUNSEL

DATE: SEPTEMBER 8, 2021

EXHIBIT A
(Standard Agreement)

SCOPE OF WORK

This Agreement is entered into by and between the California Department of Social Services, hereinafter referred to as the CDSS, and the County of Napa, hereinafter referred to as the County, for the purpose of establishing the responsibilities of the CDSS and the County in the provision and receipt of certain services, including legal consultation and legal representation in administrative action appeals as described within section III of this Agreement, associated with the Resource Family Approval (RFA) program of the County child welfare services agency and the State of California, pursuant to California Welfare and Institutions Code section 16519.5 et seq. Hereinafter, the County and CDSS may be referred to collectively as the "Parties", or individually as a "Party". If identified below in Section VII, the CDSS and County have agreed that certain services for the family evaluation, complaint investigations or home health and safety assessments shall be provided as described in Sections IV, V and VI of this Agreement.

I. Background

The RFA program was created to provide a unified, family-friendly, and child-centered process to replace the multiple processes for licensing foster homes, approving relatives and nonrelative extended family members as foster care providers, and approving adoptive families; establish a single set of standards for approvals which allow for the safety, permanence, and well-being needs of the children who have been victims of child abuse and neglect; reduce the use of congregate care placement settings; and decrease the length of time for each child to obtain permanency. Pursuant to Government Code section 30029.7, subdivision (a)(3), the County and CDSS may enter into an agreement for CDSS to provide services or activities related to RFA. The County and CDSS have identified certain services or activities to be provided by CDSS in order to expedite the delivery of services to children and nonminor dependents who reside or may reside in a resource family home.

II. Definitions

- A. "County" means the largest political division of the State having corporate powers, wherein the County's powers are exercised through its board of supervisors or through agents and officers acting under the authority of the board or authority conferred by law (Govt. Code § 23000 et seq.). As used in this Agreement, the County includes agents, officers, directors, and County employees who conduct RFA activities on behalf of the County, as described in Welfare and Institutions Code section 16519.5 et seq.
- B. "Resource Family Approval" or "RFA" program means the program wherein an applicant seeks to meet the home environment assessment and permanency

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assessment standards of the State of California as set forth by CDSS, with an approval provided by the County or applicable Foster Family Agency. This approval is in lieu of the existing foster care license, relative or nonrelative extended family member approval, and the adoption home study.

- C. "Respondent" means an applicant, resource family parent, or individual who has been served with a Notice of Action and is the subject of an administrative action. For matters that shall be heard by the CDSS State Hearings Division, a "Respondent" also means a "claimant," as defined in CDSS Manual of Policy and Procedures section 22-001.
- D. "Written Directives" (WDs)¹ means the written processes, standards, and requirements issued by the CDSS to implement the RFA Program. (See WDs section 3-01(a) (101). The WDs have the same force and effect as regulations; ensure that a county uses the same standards for RFA; and ensure that a county does not implement policies or procedures that conflict with or attempt to supersede the WDs; (WDs section 2-01.)

III. Legal Consultation and Legal Representation on Appeals/State Hearings Division (SHD) and Office of Administrative Hearings (OAH)

- A. Role of the CDSS Legal Division in the Provision of Legal Consultation and Legal Representation on Appeals:
 - 1. The CDSS Legal Division shall act as the sole legal representative on behalf of the County in the provision of legal consultations and legal representation on appeals to an RFA Notice of Action. The County is the client and is the final decision maker on decisions affecting the legal rights of the County.
 - a. The Parties shall maintain confidentiality in all communications in accordance with any applicable confidentiality laws, privacy laws, and laws governing attorney-client relationships.
 - (1) For the purposes of this section, the County shall ensure that the agents, directors, officers, and employees of the County who conduct RFA activities on behalf of the County, are familiar with and follow applicable laws for privacy and confidentiality, as well as protect and maintain the confidential nature of the communications created by attorney-client relationships, including, but not limited to, Evidence Code section 952 and applicable case law.

¹ Version 7 of the Written Directives was used as a reference in creating this Agreement. The Written Directives may be revised by CDSS during the term of this Agreement and shall be in effect from the date of revision.

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2. Except as otherwise provided in this section, the CDSS Legal Division will represent the County on all appeals to an RFA Notice of Action for denial or rescission of resource family approval, denial or rescission of a criminal record exemption, or exclusion of an individual and shall appear on behalf of the County at all proceedings related to such actions that are heard by the SHD or the OAH. Nothing in this section shall preclude a County representative from being present at an RFA hearing.
 3. If the County chooses to represent itself on an appeal in an individual case, it shall not send a Statement of Facts as described in Section III(D) to the CDSS Legal Division to request representation and shall not seek legal advice or direction from the CDSS Legal Division. In those cases, the County hearing representative will receive legal advice and direction from County Counsel or their designee. The CDSS Legal Division will not provide legal representation or advice.
 4. The Parties agree that CDSS Legal Division's scope of work shall not include legal consultation or representation regarding the following:
 - a. Writs or lawsuits or similar actions filed by or against the County, except that the CDSS Legal Division may be available to consult with the County on any such actions arising out of an RFA action as described herein;
 - b. Requests for information or documents from the County such as Public Records Act requests or subpoenas issued to the County;
 - c. Placement of a dependent child or nonminor dependent;
 - d. Relative or non-relative extended family member approvals pursuant to the "Harris" case;
 - e. Child Abuse Central Index grievance hearings;
 - f. Dependency or delinquency matters;
 - g. Assistance with issuing or serving an investigatory subpoena or warrant;
 - h. Hearings or proceedings regarding jurisdictional disputes where no Notice of Action for denial or rescission of resource family approval, or denial or rescission of a criminal record exemption, has been served;
 - i. Defending the county on a Temporary Suspension Order (TSO); and
 - j. Any other matter within the authority and direction of the County Counsel.
- B. Duties of the County and the CDSS Legal Division Regarding Consultation:**
1. In compliance with the WDs or regulations issued pursuant to Welfare and Institutions Code section 16519.5, the County is required to consult with legal counsel prior to service of a Notice of Action for denial or rescission of resource family approval, or denial or rescission of a criminal record exemption; and is required to consult with the CDSS Legal Division when recommending the exclusion of an individual.

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2. Pursuant to this Agreement, legal consultation for denials or rescissions for which the County seeks CDSS Legal Division representation shall be with the CDSS Legal Division, and not County Counsel.
3. The County may request a legal consultation with the CDSS Legal Division regarding legal or evidentiary issues related to an investigation, family evaluation or other matters affecting the approval.
4. If the County seeks a TSO against a resource family's approval, in addition to consulting with the CDSS Legal Division on the matter, the County shall consult with their County Counsel prior to service of a TSO. The County should follow its internal procedures for an RFA TSO.
5. Legal consultation shall not include technical assistance regarding program requirements or procedures, RFA implementation or statewide policies; these issues shall be referred to the CDSS RFA County Liaison, RFA Policy Analyst, or RFA Inbox.
6. The County shall work with the CDSS RFA County Liaison to schedule a regular monthly legal consult meeting, or as needed. If a matter is urgent, such as a situation warranting the immediate exclusion of an individual or a TSO, the County may contact their CDSS RFA County Liaison by phone, email or in-person and request an urgent consult with their assigned CDSS Legal Division consulting attorney.
7. Prior to a scheduled legal consult, the County shall obtain the evidence necessary to support the information contained in the legal consultation memo related to the County's finding, position, or action requested.
8. The County shall prepare a confidential legal consultation memo for each matter upon which legal advice is sought through a consult with the CDSS Legal Division. A copy of the RFA legal consult memo form can be obtained through the CDSS RFA County Liaison. Upon request, the CDSS RFA County Liaison will provide technical assistance to the County regarding the program requirements or procedures including but not limited to family evaluations, RFA implementation, statewide policies, legal consult procedures or how to draft the Notice of Action, legal consultation memo or statement of facts. Both Parties shall maintain the confidentiality of all attorney-client communications, including the legal consult memo.
9. Using a secure or encrypted format, or a secure file transfer protocol, the County shall send a properly completed legal consult memo, the draft Notice of Action, as well as relevant attachments related to the request for consult including, but not limited to, investigations, court records or arrest reports.

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These documents shall be sent to the CDSS RFA County Liaison and the consulting attorney at least five (5) business days prior to the date of the regularly scheduled consult.

10. The consult meeting is an opportunity for the CDSS Legal Division consulting attorney and CDSS RFA County Liaison to discuss the information in the consult memo provided by the County with the appropriate County staff. Accordingly, the County should make its best efforts to have the assigned County RFA worker or probation officer with knowledge of the facts described in the consult memo present at the consult. If the approval worker or probation officer cannot attend in person, the worker or probation officer should attend by teleconference. If that is not possible, the supervisor who is familiar with the facts of the matter shall attend.
11. If a matter to be discussed at the consult involves a recommendation for an exclusion action, a family evaluation conducted by CDSS, an investigation conducted by CDSS, or dual or multiple programs (e.g., RFA and a child care license), the County shall identify and request the appropriate CDSS RFA staff, CDSS adoptions staff or CDSS Community Care Licensing Division (CCLD) staff to attend or teleconference into the consult.
 - a. The County may request the assistance of the CDSS RFA County Liaison in arranging for the necessary CDSS staff to attend.
 - b. The County and CDSS shall share evidence and information regarding related investigations, assessments, or actions as required by the WDs.
 - c. Agents of the County who conduct activities as described in Welfare and Institutions Code section 16519.5 may be present during the portion of a consultation that is applicable to a matter for which the agent acted on behalf of the County, and for which the agent's presence is needed to discuss the information in the consult memo provided by the County. The County shall ensure that the agent of the County is aware of and complies with the confidentiality of the legal consult, the legal advice provided, and the confidentiality of any information shared, as required by law.
12. The CDSS Legal Division consulting attorney shall review the legal consult memo, the draft Notice of Action and attachments and shall advise the County regarding the Notice of Action, the proper hearing forum, and any other matter related to an investigation or proposed action. If the legal consult memo or draft Notice of Action are incomplete, said attorney may return them to the County to complete them or refer the County to the CDSS RFA County Liaison for technical assistance.
13. The CDSS Legal Division consulting attorney shall document the legal advice in writing within 3 to 5 business days, or as agreed upon at the consult, and

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submit the documentation to the County and the CDSS RFA County Liaison. If the matter involves dual or multiple programs or an exclusion action, the CDSS Legal Division consulting attorney shall provide the relevant CCLD Regional Office staff (licensing action) or CDSS RFA County Liaison (RFA exclusion action) with a copy of the consult memo and legal advice.

14. If the advice of the CDSS Legal Division consulting attorney is to proceed with an action that affects the approval, the County should notify the child(ren)'s placement worker, as applicable.
15. If the County fails to comply with the requirements of this Section III(B), the County waives its right pursuant to this Agreement to have CDSS Legal Division representation on the appeal.

C. County Duties Regarding Processing the Notice of Action and Appeal (NOA)

1. The County shall serve the Notice of Action in accordance with Welfare and Institutions Code section 16519.6 and the WDs or regulations. The County shall ensure the file contains adequate documentation regarding service of the Notice of Action to the correct address, such as certified mail receipts, and/or a proof of service in accordance with WDs, Article 12: Due Process.
2. If the matter includes an exclusion action or CCLD action, the County shall coordinate administrative actions, including service of the Notices of Action, notice of a related licensing action by CCLD, an exclusion order, or the filing of formal pleadings, with CDSS. (WDs, Article 12.)
3. If an appeal is filed, the County is responsible to comply with the law, WDs or regulations, and internal procedures including, but not limited to, the following:
 - a. Date-stamp the appeal and envelope;
 - b. Update the appeal status in the Notice of Action database (in AARS);
 - c. For OAH cases, immediately send the acknowledgment of appeal to Respondent and begin preparing the case for the CDSS Legal Division as described in paragraph D;
 - d. For SHD cases, begin preparing the case to be sent to the CDSS Legal Division at the same time the appeal is forwarded to the SHD as described in paragraph D;
 - e. Obtain legal case number from CDSS RFA County Liaison and add number to Statement of Facts; and
 - f. Forward the appeal to SHD by uploading the NOA and appeal to SHD's Appeals Case Management System (ACMS).

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- D. Preparing the Case to Send to the CDSS Legal Division After Receipt of an Appeal:
1. To obtain the CDSS Legal Division's representation on an RFA appeal, the County shall prepare a Statement of Facts using the current versions of the following confidential attorney-client forms:
 - a. Form RFA-9029: Statement of Facts Summary Sheet – Resource Family
 - b. Form RFA- 9029C: Complaint and Immediate Deficiencies Log Continuation
 - c. Form RFA-9029D: RFA Statement of Facts Dividers
 - d. Form RFA-9029W: Witnesses Continuation
 2. For SHD cases, the County shall prepare the Statement of Facts, a draft position statement, and copies of all approval file documents within ten (10) business days of receipt of an appeal. The documents shall be sent electronically to the CDSS Legal Division by encrypted email or Secure File Transfer (in AARS) at the same time the appeal is forwarded to SHD (WDs, Article 12). The County shall maintain the confidentiality of the attorney-client privileged Statement of Facts forms during any transmission of the forms or in any files maintained by the County. The County shall use the draft position statement template provided by CDSS when drafting the position statement. The County shall comply with the WDs section 10-05 related to retention of the Resource Family File.
 3. For OAH cases that involve a TSO or immediate exclusion action, the County shall prepare the Statement of Facts forms and copies of the RFA documents and evidence identified in the RFA 9029D: RFA Statement of Facts Dividers and send to the CDSS Legal Division and CDSS RFA County Liaison by encrypted email or Secure File Transfer within ten (10) business days of receipt of the appeal. Hard copies of the original documents shall also be sent by mail.
 4. For all other OAH cases, the County shall prepare and mail to the CDSS RFA County Liaison the Statement of Facts forms and originals of all relevant documents within thirty (30) days of receipt of the appeal. The CDSS RFA County Liaison will review the documents, provide any technical assistance necessary, and then forward to the CDSS Legal Division.
 5. The County shall make its best efforts to obtain certified court and law enforcement or other relevant records prior to sending the case to the CDSS Legal Division. If certified records are received after the case has been forwarded, then the County shall forward them to the CDSS Legal Division.

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6. Prior to finalizing the Statement of Facts, the County shall verify that the witness list contact information in Form RFA-9029: Witness List is current and updated, including the current placement and placement worker information for any child or nonminor dependent victim or witness.
- E. Duties of the County and CDSS Legal Division after the CDSS Legal Division Receives the Case:
1. Upon receipt of the case file, the CDSS Legal Division shall be responsible for the following:
 - a. Logging the case into the Legal Case Tracking System (LCTS) and immediately assigning the case to a CDSS Legal Division hearing attorney.
 - b. Preparing a new case memo identifying the hearing attorney and the hearing attorney's contact information and emailing it to the County staff identified on the Statement of Facts and the CDSS RFA County Liaison.
 2. The CDSS Legal Division hearing attorney will review the complete file to determine if the evidence is sufficient to go forward with the requested administrative action. If not, the County will be consulted, and the file may be closed without filing and sent back to the County for an informal resolution or to obtain more evidence.
 3. For cases to be heard at SHD, the CDSS Legal Division hearing attorney will review the draft Position Statement prepared by the County and work with the County to finalize it. Provided that the County provides the necessary and relevant information in a timely fashion, the CDSS Legal Division is responsible for filing the Position Statement and exhibits with SHD. The County shall be responsible for making available to Respondent all relevant documents in the County's possession in accordance with the WD's. Prior to disclosure to Respondent, the County shall withhold or redact documents that are confidential or privileged as required by law.
 4. For cases to be heard at OAH, the hearing attorney will prepare, sign and file the Accusation or Statement of Issues in accordance with the County's request in the Statement of Facts case summary and serve on the Respondent(s):
 - a. A copy of the filed Accusation or Statement of Issues will be provided to the County welfare director or chief probation officer or designee.
 - b. If there are any substantive changes to the allegations at issue that were identified in the Statement of Facts case summary provided by the County, the CDSS Legal Division shall consult the County welfare director,

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- chief probation officer, or designee for approval prior to filing the Accusation or Statement of Issues.
- c. A CDSS Legal Division attorney may sign an amended Accusation or Statement of Issues on behalf of the County, if the amendment is approved by the welfare director, probation officer or designee. The CDSS Legal Division shall file a copy of the amended pleading with OAH, as applicable.
5. If a resolution is sought prior to hearing, the CDSS Legal Division will discuss settlement options with the County, Respondent, CCLD or CDSS Program if applicable, draft the settlement agreement, and supervise its finalization. The County shall have the final decision on whether to approve a settlement. If a Respondent seeks to withdraw the appeal or notice of defense, the CDSS Legal Division shall prepare a written withdrawal for Respondent to sign, and if the matter has been set for hearing, submit a copy to the Administrative Law Judge.
6. For OAH cases, the CDSS Legal Division will prepare and serve documents on Respondent in accordance with Government Code sections 11507.5 and 11507.6.
7. While the RFA administrative action is pending, the County shall keep the assigned CDSS Legal Division hearing attorney informed of new developments that occur prior to the hearing (e.g., new arrests or new evidence), and of any changes in the Respondent's address or other contact information. The County shall timely forward any phone calls or correspondence from Respondent, his or her authorized representative, or SHD to the CDSS Legal Division hearing attorney.
8. The County shall assist the CDSS Legal Division, if necessary, in locating witnesses, with the service of subpoenas for appearance at hearing, and with the transportation of witnesses to the hearing. The County shall notify the assigned CDSS Legal Division hearing attorney if there are concerns about the testimony of a child or similarly vulnerable witness at hearing as specified in WDs, Article 12. The County shall assist the CDSS Legal Division hearing attorney in providing information or facilitating contact with the witness's placement worker or treatment provider if a motion to protect the witness is determined to be necessary. The County shall provide for the use of one-way closed-circuit television or video in accordance with WDs, section 12-16 (Conduct of Hearing; Confidentiality and Procedures), as applicable.
9. The CDSS Legal Division will represent the County at the prehearing conference, settlement conference, and hearing before SHD or OAH, and prepare any necessary motions, briefs, subpoenas, settlement documents or

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other hearing documents, including those related to the County's withdrawal of a NOA and defaults, as outlined in the Written Directives.

10. The County shall be responsible for the following hearing-related duties and costs, including but not limited to the following:
 - a. Reserving hearing rooms;
 - b. Interpreters;
 - c. Court reporters;
 - d. Witness and expert witness fees;
 - e. Security, if it is determined by the CDSS Legal Division hearing attorney, the county or an administrative law judge that a threat exists to the health and safety of those persons attending a hearing;
 - f. Obtaining records needed for hearing; and
 - g. Other hearing-related costs.
 11. Following the SHD or OAH hearing, a proposed decision is adopted or rejected by the CDSS Director or designee. If the decision is rejected, the CDSS shall review the record and prepare the final decision and order, in accordance with the established standard.
 12. The CDSS will serve the final decision and order on all parties, including the County.
 13. The CDSS Legal Division may represent the County in a request for reconsideration of the decision and order, a request for rehearing, or a request to set aside a default decision and order. If a conflict of interest exists, then representation by CDSS Legal Division shall be subject to the written consent of the parties and compliance with the Rules of Professional Conduct and paragraph G of this section.
 14. The CDSS Legal Division shall update the statewide data system (i.e., AARS) with the final order or resolution.
- F. Conflict Resolution:
1. If the County and the CDSS Legal Division consulting or hearing attorney disagree with how to proceed on a matter, the matter shall be resolved as follows:
 - a. The matter shall be elevated to the County RFA supervisor and the CDSS Legal Division attorney's supervisor to meet and confer to resolve the matter.

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- b. If no agreement is reached, the matter shall be elevated to the next County supervisor or manager level, and for the CDSS Legal Division, to the Assistant Chief Counsel to meet and confer to resolve the matter.
 - c. If still no agreement is reached, the matter shall be elevated to the Senior Assistant Chief Counsel and the equivalent County RFA program manager level to meet and confer to resolve the matter.
2. The County has the final decision on how to proceed on a matter, which shall be consistent with the CDSS Legal Division attorney's ethical duties regarding the minimum standards of evidence necessary to proceed with an action and the considerations identified below in paragraph F.3. of this section.
 3. The resolution discussion shall include consideration of the minimum legal requirements for an action in the applicable statutes and WDs or regulations, any risks attendant to administrative litigation including a negative outcome at hearing, any risks to the health and safety of a child or nonminor dependent that may be caused by a failure to take action, and CDSS oversight responsibilities as mandated by law.
 4. Nothing in this section shall interfere with the Parties' termination rights and the right of the CDSS Legal Division to withdraw from representation pursuant to the terms of this Agreement or applicable law.

G. Professional Responsibility; Conflict of Interest in Representation

1. The County acknowledges that the attorneys within the CDSS Legal Division have an ethical and legal duty to avoid a conflict of interest or the appearance of a conflict of interest when providing legal services to the County.
2. Pursuant to the California Rules of Professional Conduct, the CDSS Legal Division's attorneys may not be permitted to represent a client when there is a conflict of interest. If applicable, the CDSS Legal Division attorney is required to take certain actions which may include, but are not limited to, withdrawal from representation for individual cases or obtaining informed written consent from each client for individual cases.
3. The Parties acknowledge that there exists an appearance of a conflict of interest or an actual conflict of interest due to the CDSS Legal Division representing both CDSS and the County in administrative actions falling within the jurisdiction of both agencies. By the signing of this Agreement, the Parties are providing their written consent to the CDSS Legal Division's dual representation of both CDSS and the County, where applicable.

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4. In all other matters in which there exists an appearance of a conflict of interest or an actual conflict of interest, the CDSS Legal Division consulting or hearing attorney shall report the conflict to the County in writing as soon as possible after discovering the conflict. Potential conflicts of interests that may arise in RFA matters include, but are not limited to, the following:
 - a. Dual program matters involving an RFA and licensing action where the County and CDSS disagree on how to proceed;
 - b. Conflicts regarding the CDSS oversight function over the County's RFA program;
 - c. Conflicts due to a lawsuit pending against CDSS or the County; and
 - d. A request by the County for reconsideration of a CDSS issued order.

H. Withdrawal from Representation

1. If a County fails to follow legal advice or fails to perform any of its duties as set forth in this Agreement, the CDSS Legal Division retains the right to withdraw on referred cases by sending a written notice identifying those case(s) from which it is withdrawing to the County as specified in Exhibit A, Attachment 1, page 4, Paragraph O (Notices), subparagraphs 2 (United States Mail) or 3 (Email).
2. The Parties acknowledge and agree that the CDSS Legal Division must decline or terminate representation on cases as required by the California Rules of Professional Conduct.

IV. Family Evaluation

A. Provision of Family Evaluation Services

1. If identified in Section VII that the County and CDSS agree that the CDSS Adoptions Services Bureau shall provide family evaluation services on behalf of the County, in part or in full, this Section IV provides the terms and conditions of such services.
2. In conducting the family evaluation services, the CDSS Adoptions Services Bureau will adhere to the requirements specified the Welfare and Institutions Code section 16519.5 and the RFA WDs sections: Definitions, 3-01; Forms, 3-02; County Reporting Requirements, 4-03; Implementation of Resource Family Approval Program by a County, 4-05; and Family Evaluation, 6-05.

- B. The CDSS Adoptions Services Bureau and County agree to coordinate efforts in the following areas:**

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1. Exchange of information about resource family applicants and keeping each Party informed of general progress in the family evaluations and changes that may affect the evaluation. This exchange may include, but is not limited to, any information (e.g. complaints, concerns, adverse actions) that would reflect the suitability of the prospective resource family.
2. Communication regarding the general progress of the evaluation that may affect the work provided by each Party, including potential inability to complete the evaluation, as needed.
3. Establishing mutually agreed upon timelines for completing the family evaluation.
4. Complying with the applicable laws and the RFA WDs relevant to family evaluations.
5. Providing other appropriate and necessary coordination as needed.

C. Responsibilities of the County

1. The County will take the following actions:
 - a. Refer resource family applicants to the appropriate CDSS Adoptions Regional Office for a family evaluation.
 - b. Provide all necessary documents as they become available to the CDSS Adoptions Regional Office in order to conduct a family evaluation, including, but not limited to, RFA applications, home health and safety assessment, training records health history screening results, personal letters of references, whether criminal record clearances or exemptions were granted or denied, substantiated reports of child abuse and neglect, Department of Motor Vehicles (DMV) records, and employment verifications.
 - c. Notify resource family applicants that the County may share confidential information with CDSS to conduct a family evaluation and that CDSS will perform the family evaluation for the County.

D. Responsibilities of the CDSS

1. The CDSS will take the following actions:

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- a. An Adoptions Supervisor will assign each family evaluation within five (5) business days to a CDSS Adoptions Specialist with a Master's degree in Social Work who may also be a Licensed Clinical Social Worker.
- b. Conduct an evaluation of resource family applicants according to the RFA WDs section 6-05: Family Evaluation. Evaluation to be initiated within two (2) weeks of being assigned.
- c. Conduct a separate face-to-face interview of all persons living in the home as specified in RFA WDs section 6-05(a)(2).
- d. Request approval from the County to refer an applicant for a psychological evaluation, drug and alcohol assessment or testing, counseling, or other services during the evaluation as necessary. Associated costs of the services of the referrals shall be the responsibility of the County and paid by the County outside this Agreement to the applicable service provider.
- e. Prepare a written family evaluation that includes an evaluation of the information obtained during a family evaluation of the resource family applicant, including a risk assessment, and recommendations that RFA be approved or denied based on information gathered through the family evaluation.
- f. CDSS will provide the County with the written family evaluation report within sixty (60) days of receipt of the referral for the family evaluation, with priority for completed family evaluations for relatives with emergency placements, unless further information is needed to complete the evaluation.
- g. Ensure all records provided to CDSS by the County and all information obtained in order to conduct a family evaluation are kept confidential as specified in RFA WDs section 4-04: Confidentiality.
- h. Provide for a copy of the family evaluation file upon request of the County staff responsible for the provision of RFA services.
- i. Provide a CDSS Adoptions Specialist to testify as to the family evaluation if the results of a family evaluation are at issue during an administrative hearing.
- j. Absent pending litigation or other good cause identified by CDSS, the Adoptions Regional Office shall retain the records of the family evaluation for ninety (90) days after an evaluation is provided to the County. Thereafter, the family evaluation file shall be securely delivered to the County. The County shall retain the closed evaluation file in accordance with the retention policies of CDSS. Access to a copy of the family evaluation file shall be made available to CDSS (or its agents or representatives) upon request in the event of audit, or as required or permitted by law.

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- k. For each request, the County shall provide a copy within ten (10) business days, unless the request is identified as urgent. The County shall use its best efforts to provide a copy within the period identified by CDSS for an urgent request.

E. Conflict Resolution

1. The County and the CDSS will use customary and available problem-solving methods and resources in efforts to resolve differences. Any disagreements or conflicts regarding resource family evaluation services provided by the Parties for a particular individual will be resolved as follows:
 - a. The primary social worker from the County and the CDSS will meet and confer to resolve differences regarding a particular family evaluation.
 - b. If the primary social workers are unable to resolve differences, the County supervisor and the CDSS supervisor and primary social workers will meet and confer to resolve differences.
 - c. If the supervisors and social workers are unable to resolve differences, the County Program Manager and the CDSS Adoptions Regional Office Manager and their respective supervisors and social workers will meet and confer to resolve differences.
 - d. If the differences remain unresolved through the process specified above, the matter will be referred to the next higher level of management for each of the Parties until the matter is resolved.

F. Conflict of Interest

1. The CDSS Adoptions Regional Office staff conducting family evaluations shall be instructed to avoid a conflict of interest or the appearance of a conflict of interest when rendering services.
2. The CDSS shall direct CDSS Adoptions Specialists to RFA WDs section 4-02(g) to identify any conflict of interest. If there exists an appearance of a conflict of interest or an actual conflict of interest, the Adoptions Specialist shall report the conflict to his/her supervisor, who may transfer responsibility for the evaluation to another Adoptions Specialist.

V. Complaint Investigations

A. Agreement to Provide Complaint Investigation Services

1. The County and CDSS agree that the CDSS CCLD shall investigate on behalf of the County all complaint allegations, made against resource families, if

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these services are identified in Section VII; this Section V provides the terms and conditions agreed upon by the Parties for all such investigations.

2. In conducting complaint investigations, the CCLD Regional Office will adhere to the requirements specified in RFA WDs sections 3-01, 3-02, 4-03, 4-05, and 9-06A.

B. Coordination of Efforts

The CDSS and County agree to coordinate efforts in the following areas:

1. As necessary, exchange information about each resource family complaint investigation and keep each Party informed of general progress in the complaint investigation and changes that may affect the result. This exchange may include, but is not limited to, any information (e.g. concerns, post complaint events, or adverse actions) relevant to the complaint investigation.
2. As needed, communicate the general progress in the complaint investigation that may affect the work provided by each Party, including potential inability to complete the complaint investigation.
3. Establish mutually agreed upon timelines for providing requested information or responses for actions not specified in the RFA WDs or applicable law.
4. Provide other appropriate and necessary coordination as needed.

C. Complaint Referral to the CCLD

1. After the preliminary review specified in RFA WDs section 9-06A(c), the County will refer each complaint that requires an investigation to the appropriate CCLD Office within one (1) business day following receipt of the complaint as specified in RFA WDs section 4-03(e).
2. The referral must be in writing and include the physical address location of the County's file for the resource family, the contact information of the custodian of the resource family's file, the contact information of the complainant, and detailed information regarding the complaint allegation.

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D. Complaint Assignment

1. Upon receipt of the complaint referral, the CCLD Regional Office shall create a file and associated file complaint number in a CCLD database for each resource family complaint investigation.
2. Upon receipt of the referral of the complaint, the CCLD Regional Office will immediately assign the complaint to staff for investigation.
3. Upon assignment, the assigned CCLD Regional Office staff will contact the custodian of the resource family file and undertake a process to secure access to the resource family file or a copy of the file.
 - a. The County agrees to allow the CCLD Office staff to have access to the resource family's file or to be provided a copy, upon request. If a copy will be provided electronically, the County is responsible for securely transferring the file to the appropriate CCLD Regional Office staff.

E. File Review and Initial Complaint Investigation

1. Upon receipt of a copy of the resource family's file or access to the file, the CCLD Regional Office staff shall undertake the following:
 - a. Review the file for any conflicts of interest in order to comply with the conflict of interest provisions in RFA WDs section 9-06A(o) and (p).
 - (1) If a conflict exists or appears to exist, the CCLD Regional Office staff shall immediately report the conflict to his or her supervisor, who may transfer responsibility for the complaint investigation to another staff member.
 - b. Review the resource family's file and any related licensing files.
 - c. Confirm whether any adverse action against the resource family is currently in process by CDSS or the County, or previously undertaken or concluded by either Party. If such exist, documentation regarding the adverse action shall be made available by the County or other Division of CDSS.
 - (1) The additional documentation of any adverse actions shall be reviewed and made a part of the complaint investigation file.
2. Initial Investigation Activities

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- a. The CCLD Regional Office staff will interview the complainant, if known.
- b. Witnesses of the alleged RFA violation may be contacted by the CCLD Regional Office during the initial investigation and throughout the period the complaint investigation remains open.
- c. Any documentation received during the complaint investigation shall be made a part of the complaint investigation file.

F. The Initial 10-Day Visit to the Resource Family Home

1. The CCLD Regional Office staff will conduct an unannounced visit to the resource family's home within ten (10) calendar days of receipt of the complaint referral, except as specified in RFA WDs section 9-06A(j), (k), and (o).
2. The initial 10-day visit shall be fully documented in the CCLD complaint investigation file.

G. New Allegations

The CCLD Regional Office staff shall immediately report any new allegation(s) disclosed during an investigation to the County.

H. RFA Deficiencies

The CCLD Regional Office staff shall report any known or potential deficiencies unrelated to the complaint to the County so the County RFA staff can take appropriate action in response.

I. Further Investigation Required

The CCLD Regional Office staff will notify the County if the complaint investigation cannot be completed within ninety (90) days after the initial 10-day visit because further investigation is required.

J. Complaint Investigation Report

1. The CCLD Regional Office staff will prepare a written complaint investigation report containing a finding for each allegation as either substantiated, inconclusive, or unfounded.

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2. The CCLD Regional Office staff will forward the written complaint investigation report to the County upon completion.
3. If the County disagrees with the CCLD Regional Office complaint investigation report findings, then it shall contact the CCLD Regional Office to discuss and/or to request additional clarification.

K. Notification to Resource Family and Complainant

1. Upon receipt of the complaint investigation report, the County shall deliver a copy of the complaint investigation report to the resource family.
2. Upon request by the County, the CCLD Regional Office staff responsible for the complaint investigation report will provide technical assistance.
3. The County shall notify the complainant, if known, of the findings of the complaint investigation.

L. Follow-Up

For substantiated findings, the County RFA staff shall develop a corrective action plan for the resource family to correct identified deficiencies, or may take other action as specified in the RFA WDs. Nevertheless, if a County determines that it is not possible to correct an identified deficiency, then the County shall document the deficiency and may proceed with the necessary administrative action as specified in the RFA WDs.

M. Cross-Reporting Investigation Results

The County shall report investigation results as specified in applicable law, RFA WDs sections 4-04 and 9-06C, or as required by this Agreement.

N. Records

1. Absent threatened or pending litigation or other good cause identified by CDSS, records related to the complaint investigation shall be held by the CCLD Regional Office for the duration of this Agreement and for three (3) years following the expiration or termination of this Agreement or three (3) years following the end date of the provision of complaint investigation services, whichever first occurs. Thereafter, the records for the complaint investigations specified in this Agreement shall be delivered to the County.

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2. Within ten (10) calendar days of the County's written request, the CCLD Regional Office shall provide a copy of any complaint investigation file created pursuant to this Agreement.

O. Reporting Complaints with Investigations Pending

The CCLD Regional Office shall provide to the County monthly written reports of complaint investigations open longer than ninety (90) days and subject to further investigation.

VI. Home Health and Safety Assessment

A. Provision of Home and Health Safety Assessment Services

1. If identified in Section VII that the County and CDSS agree that the CDSS Adoptions Services Bureau shall provide home health and safety assessment services on behalf of the County, in part or in full, this Section VI provides a description of the services and the responsibilities of the Parties.
2. In conducting the home health and safety assessment services as described in the WDs, Article 6, section 6-02: Home Environment Assessment, paragraph (a) (2), the CDSS Adoptions Services Bureau will adhere to the requirements specified in the Welfare and Institutions Code section 16519.5, the most recently published version of the RFA WDs, and the most recently published version of the Form RFA-03². Resource Family Home Health and Safety Assessment Checklist (hereinafter referred to as Form RFA-03). As appropriate CDSS shall refer to the WDs, to complete the Form RFA-03 and provide the required summary.

B. The CDSS Adoptions Services Bureau and the County agree to coordinate efforts in the following areas:

1. Exchange information about resource family applicants and keep each other informed of general progress in the home health and safety assessment and changes that may affect the assessment. This exchange may include, but is not limited to, any information (e.g. complaints, concerns, adverse actions) that would reflect the suitability of the prospective resource family applicant(s).

² The RFA-03 form includes applicable instructions in the WDs sections 11-01 through 11-16 regarding First Aid supplies including but not limited to provisions regarding self-administering, storing and documenting.

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2. As needed communicate the general progress in the assessment that may affect the work provided by each Party, including facts or circumstances which may delay or prevent the completion of the assessment within sixty (60) days.
3. Establish mutually agreed upon timelines for completing the home health and safety assessment when such cannot be completed within sixty (60) days. Comply with the RFA WDs relevant to home health and safety assessments.
4. Provide other appropriate and necessary coordination as needed.

C. Responsibilities of the County

1. The County will take the following actions:
 - a. Refer resource family applicants to the appropriate CDSS Adoptions Regional Office for a home health and safety assessment.
 - b. Timely provide all necessary documents to the CDSS Adoptions Regional Office, using a secure or encrypted format, or a secure file transfer protocol, so that each home health and safety assessment may be completed within sixty (60) days.
 - c. Notify resource family applicants that CDSS will perform the home health and safety assessment for the County.
 - d. Conduct the background checks and related activities as described in the RFA WDs, section 6-03A.
 - e. For items identified as incomplete in the Home, Health and Safety Assessment provided by CDSS or form RFA 03 the County shall be responsible for verifying completion prior to approval of the resource family.

D. Responsibilities of the CDSS

1. The CDSS will take the following actions:
 - a. Assign a CDSS Adoptions Specialist with a Master's degree in Social Work who may also be bilingual and/or a Licensed Clinical Social Worker for each home health and safety assessment.
 - b. Conduct a home health and safety assessment according to the RFA WDs section 6-02(a)(2) that includes all of the following: A health and safety assessment of the home and grounds, outdoor activity space and storage areas of the applicant's home using form RFA-03: Resource Family Home Health and Safety Assessment Checklist, to determine compliance with certain sections of Article 11 of the WDs and, if applicable, section 11.1-

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07: Additional Home and Grounds Requirements for Specialized Resource Families.

- c. Prepare a summary of the home health and safety assessment in a written format that includes an evaluation of the information obtained during a home health and safety assessment of the resource family applicant's home and property (e.g. if there are items that needed to be repaired or purchased).
- d. CDSS will provide the County with the written summary report, that also includes the completed original Form RFA 03, within sixty (60) days of receipt of the referral from the County for the home health and safety assessment.
- e. Ensure all records provided to CDSS by the County and all information obtained in order to conduct a home health and safety assessment are kept confidential as specified in RFA WDs section 4-04: Confidentiality.
- f. Provide for a copy of the home health and safety assessment file upon request of the County staff responsible for the provision of RFA services.
- g. Provide a CDSS Adoptions Specialist to testify in regards to the home health and safety assessment if the results of a home health and safety assessment are at issue during an administrative hearing.
- h. Absent pending litigation or other good cause identified by CDSS, the Adoptions Regional Office shall retain the records of the home health and safety assessment for ninety (90) days after an assessment is provided to the County. Thereafter, the home health and safety assessment file shall be securely delivered to the County. The County shall retain the closed assessment file in accordance with the retention policies set forth in Article 10, section 10-05 of the Written Directives. Access to a copy of the home health and safety assessment section of the resource family file shall be made available to CDSS (or its agents or representatives) upon request in the event of a review or audit, as permitted by law, or as required by court order.

E. Conflict Resolution

- 1. The County and the CDSS will act in good faith to resolve differences. Any disagreements or conflicts regarding resource family home health and safety assessments and how they are performed will be resolved as follows:
 - a. The primary social worker from the County and the CDSS will meet and confer to resolve differences regarding home health and safety assessments.
 - b. If the primary social workers are unable to resolve differences, the County supervisor and the CDSS supervisor and primary social workers will meet and confer to resolve differences.

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- c. If the supervisors and social workers are unable to resolve differences, the County Program Manager and the CDSS Adoptions Regional Office Manager and their respective supervisors and social workers will meet and confer to resolve differences. Requests shall be made by written communication such as email to/from the county to/from the relevant CDSS Adoptions Regional Office Manager. Response times between the parties will be no longer than seven (7) calendar days. Communication may be in person or by telephone. Meetings will continue until the differences are resolved.
- d. If the differences remain unresolved through the process specified above, the matter will be referred to the next higher level of management for each of the Parties until the matter is resolved if appropriate.

F. Conflict of Interest

1. The CDSS Adoptions Regional Office staff conducting home health and safety assessments shall be instructed to avoid a conflict of interest or the appearance of a conflict of interest when rendering services.
2. The CDSS shall direct CDSS Adoptions Specialists to RFA WDs section 4-02(g) to identify any conflict of interest. If there exists an appearance of a conflict of interest or an actual conflict of interest, the Adoptions Specialist shall report the conflict to his/her supervisor, who may transfer responsibility for the home health and safety assessment to another Adoptions Specialist.

VII. Identification of Services

The Parties identify that in addition to the services of section III, Legal Consultation and Legal Representation on Appeals, the services described in Section IV, Section V and/or Section VI are a part of this Agreement, if checked below:

Section IV, Family Evaluation ☐

Section V, Complaint Investigations ☐

Section VI, Home Health and Safety Assessment ☐

In the event this Agreement expires or is terminated with open evaluations, investigations, assessments, or legal consultations or representation, CDSS may complete such services in accordance with the terms in this Agreement.

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VIII. Project Representatives

The Project Representatives during the term of this Agreement shall be:

CDSS

Name: Meryl Press
Title: RFA Policy Analyst
Address: 744 P Street, MS 9-14-46
Sacramento, CA 95814
Phone: (916) 651-9431
Email: Meryl.press@dss.ca.gov

County of Napa

Name: Noelle Poulsen
Title: Staff Services Analyst II
Address: Napa County Health and Human Services Agency
2751 Napa Valley Corporate Drive, Building B
Napa, CA 94558
Phone: (707) 253-4084
Email: Noelle.Poulsen@countyofnapa.org

Either party may make changes to the Project Representative information by giving ten (10) calendar days written notice to the other Party. Said changes shall not require an amendment to this Agreement.

IX. Authority to Enter into This Agreement

Each Party entering into this Agreement represents the existence of the authority to enter into this Agreement.

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A. Term

The initial term of this Agreement shall commence on July 1, 2021 and shall terminate on June 30, 2024 (the "**Initial Term**"). This Agreement may be renewed by written amendment on a year-to-year basis for each one-year renewal period, upon its commencement, to constitute part of the "**Term**" for all purposes hereunder.

B. Termination

1. Termination without Cause: Each Party reserves the right to terminate this Agreement at any time and for any reason upon provision of ninety (90) days' advance written notice to the other Party in accordance with paragraph O (Notices).
2. Termination for Cause: Each Party reserves the right to terminate the Agreement for cause. In addition, if either Party defaults under this Agreement, the agreement may be terminated by the non-defaulting Party effective upon provision of forty-five (45) days advance written notice of termination provided to the defaulting Party in accordance with paragraph O (Notices).
3. Default Costs: In the event of termination of this Agreement due to a default by either Party, the non-defaulting Party shall not be liable for any costs incurred by the defaulting Party in connection with such termination.
4. Return of Materials: Upon the expiration or earlier termination of this Agreement, each Party shall return to the other Party any and all materials, equipment or documents provided by the other Party in connection with the activities governed by this Agreement within ten (10) business days of written demand therefor.

C. Ineligible for Federal Assistance

This Agreement is void or voidable if the either Party receives reliable information that the other Party has been debarred, suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule, or otherwise declared ineligible from receiving Federal agreements, certain sub-agreements, and certain Federal assistance and benefits.

D. Amendments

This Agreement may be modified, amended, or supplemented only by a written amendment, signed by a Representative from each Party, who has the authority to

GENERAL TERMS AND CONDITIONS

act on behalf of their respective Party. Each Party is responsible for obtaining the necessary approval(s) before entering into any amendment.

E. Time

1. Time is of the essence for the performance of the services of this Agreement. Each Party shall promptly comply with the terms of this Agreement and in the performance of the activities described in Exhibit A, Sections III, IV, V, and VI. If a Party is unable to comply with a term or requirement of this Agreement, it shall promptly notify the other Party's Project Representative of the inability to comply with the particular requirement or term.
2. Each Party to this Agreement shall devote such time to the performance of the activities described in Exhibit A as may be reasonably necessary for the satisfactory performance of the obligations of this Agreement.
3. The Party failing to meet the timelines described in the services in Exhibit A, Sections III, IV, V and VI of this Agreement shall be responsible for any fees or costs imposed by the applicable law which result due to the other Party.

F. Default

Neither party shall be considered to be in default of this Agreement to the extent the performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the Party.

G. Conflict of Interest

The Parties agree to enforce the requirements of the California Government Code, Section 1090 et seq. and Sections 87100 through 87105 to prevent a public officer or employee, including a subcontractor, from participating in an activity that would constitute a conflict of interest.

H. Nondiscrimination

The Parties shall not discriminate in the employment of persons necessary to perform this Agreement on any legally impermissible basis, including on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

GENERAL TERMS AND CONDITIONS

1. The Parties represent that each is aware and shall follow: a) Title VII of the Civil Rights Act of 1964, including subsequent amendments (42 U.S.C. § 2000e et seq.); b) the Age Discrimination Act of 1967 (29 U.S.C. § 621 et seq.); c) Title I of the Americans with Disabilities Act of 2008 (42 U.S.C. § 12101 et seq.); and d) the California Fair Employment and Housing Act (California Govt. Code, § 12900 et seq.), including the related regulations commencing at 2 CCR § 11006 et seq.
2. In the provision of services each Party shall be responsible for the actions of its employees, directors or officers so that employees and applicants for employment and any member of the public are free from any unlawful discrimination.
3. The Parties agree to include the non-discrimination and compliance provision of this paragraph in all sub-agreements, if any, to perform services under this Agreement.

I. Change in Statutes or Regulations

If there is a change of statute or regulations, including the Written Directives (WDs), applicable to the performance of this Agreement, both Parties agree to be governed by the new provisions, unless either party gives Notice to terminate pursuant paragraph O of this Agreement or identifies through written correspondence that the changes in law require negotiation of the responsibilities or terms of the Agreement.

J. Assignment

Except as specifically authorized within the Agreement, no rights may be assigned and no duties under this Agreement may be delegated by a Party without the prior written consent of the other, and any attempted assignment or delegation without such consent shall be void. Each successor or assignee of the applicable Party to this Agreement shall be held jointly and severally liable under this Agreement.

K. Responsibility of Project Representatives

All matters concerning the administration of this Agreement, which are within the responsibility of the Parties shall be under the direction of, or shall be submitted to, the respective Project Representative or the party's employee specified, in writing, by the Project Representative. A Party may, in its sole discretion, change its designation of its Project Representative upon providing written notice to the other Party at least ten days prior to such change in accordance with paragraph O (Notices). The Project Representatives for the Parties are specified in the Exhibit A, Page 24, Section VIII.

GENERAL TERMS AND CONDITIONS

L. Waiver

1. Any waiver shall be memorialized in writing, and signed by the Project Representative of each Party. However, neither Party may waive provision or right in the Agreement that is a required act specified in the WDs.
2. The failure of either Party to enforce any right or provision of this Agreement shall not be construed as a waiver by the other Party of its rights under the agreement and shall not prevent the other Party from subsequently enforcing such right or provision.

M. Cumulative Rights

The rights and remedies of the Parties herein are cumulative and are in addition to any other rights or remedies that the Parties may have at law or in equity.

N. Severability

Should any part, term, portion, or provision of this Agreement be finally decided by a court of competent jurisdiction to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the Agreement which the Parties intended to enter into in the first place.

O. Notices

A notice to the other Party in the administration of this Agreement shall be given to the Party's Project Representative by regular mail, or by email as more particularly specified in this paragraph. Any such notice shall be deemed given on:

1. Personal Service: The day the notice is personally delivered to the Party's Project Representative.
2. United States Mail: Five days after the date the notice is deposited in the United States mail, addressed to a Party's Project Representative with first-class postage fully prepaid;
3. Email: On the day the notice is transmitted by email to the email address of the Party's Project Representative as specified in Section VIII, provided an original of such notice is deposited in the United States mail, addressed to the Party's Project Representative, on the same day as the email transmission.

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P. Compliance with Applicable Laws

The Parties shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the service specified in this Agreement. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this Agreement.

Q. Negotiated Agreement

This Agreement was negotiated between the Parties. Neither Party is deemed to be the Party which prepared this Agreement within the meaning of California Civil Code, section 1654.

R. Independent Advice

Each Party represents that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other Party. Each Party also represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such Party willingly foregoes any such consultation.

S. Information Subject to a Business Associate Agreement

The Parties agree to identify for the other Party protected health information in the records that was provided through a business associate agreement of a covered entity, as required by 42 U.S.C 1320d and its implementing regulations at 45 CFR Parts 142, 160, 162, and 164, collectively referred to as the Health Insurance Portability and Accountability Act Privacy Rule.

T. Conflicting Disclosure Laws

The Parties agree to follow the requirements of the law for the disclosure of confidential records. When in doubt as to whether a record in its possession should be disclosed or withheld, each Party agrees to contact its Legal Counsel for direction.

U. Mailing of Confidential Information

The Parties may use the United States Postal Service to deliver records containing personal or confidential information to the other provided that the record(s) are double enveloped with the interior envelope identified as confidential with the name of the recipient of the mail on the interior envelope. Additionally, each shall require

GENERAL TERMS AND CONDITIONS

that the records being delivered shall only be delivered to the addressee with an acknowledgement of receipt. The Party sending the records is responsible for obtaining a copy of the signed receipt and maintaining it.

V. Transporting Records

The Parties agree that all records containing personal or confidential information shall be transported in a secure manner. When using a third party who is not a Party to this Agreement to transport records to the other Party, the Parties each agree to notify the other before sending records to the other containing personal or confidential information, as defined in law. Notice may be provided electronically, but receipt of the message must be confirmed before commencing the transport of the records to the other Party. Additionally, except for personal delivery by a representative of the Parties a bonded courier service shall be used. The records shall be securely double-enveloped or boxed with the interior envelope or box identified as confidential and properly addressed to the intended recipient/employee. Upon delivery, the courier shall obtain a signed acknowledgement of receipt from the entity receiving the documents. The Party sending the records is responsible for obtaining a copy of the signed receipt and maintaining it.

W. Indemnification

1. Claims Arising from Acts or Omissions of the County

The County hereby agrees to defend and indemnify the CDSS, its agents, officers, and employees (hereinafter collectively referred to as the CDSS), from any claim, action or proceeding against the CDSS arising from the County's negligence in the performance of the services and activities of this Agreement, including omissions to act. At its discretion, the CDSS may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the County of any obligation imposed by this Agreement. The CDSS shall notify the County promptly of any claim, action or proceeding and cooperate fully.

2. Claims Arising from Acts or Omissions of the CDSS

The CDSS hereby agrees to defend and indemnify the County, its agents, officers, and employees (hereinafter collectively referred to as the County), from any claim, action or proceeding against the County arising from CDSS' negligence in the performance of the services and activities of this Agreement, including omissions to act. At its discretion, the County may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the CDSS of any obligation imposed by this

GENERAL TERMS AND CONDITIONS

Agreement. The CDSS shall notify the County promptly of any claim action or proceeding and cooperate fully.

X. Relationship of the Parties

The CDSS is acting as a contractor for the delivery of the services; this is not a joint venture agreement between the Parties. It is understood by both Parties that this Agreement does not create an employer-employee relationship between the Parties. Each Party agrees that it shall not enter into agreements or make representations or promises on behalf of the other Party, except as identified in Exhibit A.

Y. Bankruptcy

The Parties shall immediately notify the other in the event that either ceases conducting business in the normal manner or becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business on assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of this state relating to insolvency or protection of the rights of creditors.

Z. Insurance Requirements

The CDSS is a self-insured public entity, which possesses the ability to cover liabilities, including general, professional, motor vehicle, and workers' compensation liabilities arising from or connection with the performance of services under this Agreement by CDSS, its employees, officers, or directors. Evidence of self-insurance is provided with Exhibit A, Attachment 3. Evidence of CDSS' self-insurance for liabilities, from the use of motor vehicles includes owned, non-owned, and hired vehicles used by CDSS employees in the performance of services, is provided with Exhibit A, Attachment 4.

AA. Title to Documents; Copyrights

The reports, forms and other materials produced by the CDSS pursuant to this Agreement are the property of the CDSS and shall not be subject to any copyright claimed by the County, its employees, subcontractors or agents. However, the County may use for administrative purposes completed materials developed or produced by the CDSS. Incomplete documents or projects may not be used without the prior written consent of the CDSS. Records, reports, or documents containing personal or confidential information shall not be used for any commercial purpose and shall not be copyrighted by either Party, including the employees, officers, directors, or agents of each Party.

GENERAL TERMS AND CONDITIONS

BB. Venue

It is agreed by the Parties to this Agreement that, unless expressly waived by CDSS, any action brought to enforce provisions of this Agreement for declaratory relief shall be filed and remain in a court of competent jurisdiction in the County of Sacramento in the State of California.

CC. Controlling Law

The validity, interpretation and performance of this Agreement shall be construed under the laws of the State of California, or when applicable federal law.

DD. Entire Agreement

This Agreement is the entire Agreement of the Parties for the performance of the services described in Exhibit A. There are no understandings or agreements pertaining to this Agreement except as are expressly stated in writing in this Agreement or in any document attached hereto or incorporated by reference. It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, agreements, written, or oral, between the Parties.

Information Security Requirements

I. Information Security Incidents and/or Breaches

- A. **Discovery and Notification of Incidents and/or Breaches.** CDSS shall be responsible for facilitating the Incident and/or Breach response process as described in California Civil Code 1798.29(e), California Civil Code 1798.82(f), and SAM 5340, Incident Management. CDSS shall notify the CDSS Program Contract Manager and the County Information Security and/or Privacy Officer within one working day by telephone call and email upon the discovery of the Incident and/or Breach affecting the security of County Confidential, Sensitive, and/or Personal (CSP) Information if the County CSP was, or is reasonably believed to have been, acquired by an unauthorized person, or there is an intrusion, potential loss, or unauthorized use or disclosure of the County CSP is in violation of the Agreement, this provision, the law, or potential loss of the County CSP that is in violation of this Attachment 2. CDSS shall take:
1. Prompt corrective action to mitigate any risks or damages involved with the Incident and/or Breach and to protect the operating environment;
 2. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- B. **Isolation of System or Device.** A system or device, containing County CSP, compromised by an Incident and/or Breach involving an exploitation of a technical vulnerability, shall be promptly disconnected from CDSS' production environment with access to only individuals who are participating in the investigation, mitigation, and remediation of the Incident and/or Breach. Such system or device shall remain disconnected from the production environment until the risk from the exploited vulnerability has been adequately mitigated. The County must be contacted prior to placing the previously compromised system or device, containing County CSP, back in the production environment. The affected system or device, containing County CSP, shall not be returned to operation in the production environment until the County Information Security and/or Privacy Officer gives its approval.
- C. **Investigation of Incidents and/or Breaches.** CDSS shall promptly investigate such Incidents and/or Breaches.
- D. **Updates on Investigation.** CDSS shall provide regular (at least once a week) email updates on the progress of the Incident and/or Breach investigation to the CDSS Program Contract Manager and the County Information Security and/or Privacy Officer.

- E. **Written Report.** CDSS shall provide a written report of the investigation to the CDSS Program Contract Manager and the County Information Security and/or Privacy Officer within fifteen (15) working days of the discovery of the Incident and/or Breach. To the extent CDSS has such information, the report shall include but not be limited to the following:
1. CDSS point of contact information;
 2. Description of what happened, including the date of the Incident and/or Breach and the date of the discovery of the Incident and/or Breach, if known;
 3. Description of the types of County CSP that were involved, and the extent of the information involved in the Incident and/or Breach;
 4. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed County CSP;
 5. A description of where the County CSP is believed to have been improperly transmitted, sent, or utilized;
 6. A description of the probable causes of the improper use or disclosure;
 7. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered; and
 8. Full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the Incident and/or Breach.
- F. **Notification of Individuals.** CDSS shall notify individuals of the breach or unauthorized use or disclosure when notification is required under applicable state or federal law as determined by the County. CDSS shall pay any costs of such notifications, as well as any costs associated with the breach. The CDSS Program Contract Manager and the County Information Security and/or Privacy Officer shall promptly approve the time, manner and content of any such notifications, and such approval shall not be unreasonably withheld.



CALIFORNIA DEPARTMENT OF
GENERAL SERVICES

Governor Gavin Newsom

July 1, 2021

**STATE OF CALIFORNIA
PUBLIC LIABILITY AND WORKERS' COMPENSATION
INSURANCE FISCAL YEAR JULY 1, 2021 / JUNE 30, 2022**

Whom It May Concern:

In accordance with Government Code section 11007.4, the State of California has elected to be self-insured for liability exposures. Under this form of insurance, the State and its employees acting in the course and scope of their employment are insured for tort liability arising out of official State business. All claims against the State of California based on tort liability should be presented as a government claim to the Government Claims Program, P.O. Box 989052 MS 414, West Sacramento CA 95798-9052 (Gov. Code section 900, et. seq.) Internet link: <https://www.dgs.ca.gov/ORIM/Services/Page-Content/Office-of-Risk-and-Insurance-Management-Services-List-Folder/File-a-Government-Claim>

The State of California has also elected to be insured for its motor vehicle liability exposures through the State Motor Vehicle Liability Self-Insurance Program (VELSIP). This program provides liability coverage arising out of the operations of motor vehicles used by state employees for official state business (California Vehicle Code Sections 17000 and 17001). Motor vehicle liability claims against the State of California should be presented to the Office of Risk and Insurance Management, P.O. Box 989052 MS-403, West Sacramento, CA 95798- 9052, (800) 900-3634, Claims@dgs.ca.gov. If your motor vehicle liability claim is not resolved within six months from the date of loss, California law requires you to file a formal claim with the Government Claims Program, P.O. Box 989052 MS 414, West Sacramento, CA 95798-9052 (Gov. Code section 900, et. seq.) Internet link: <https://www.dgs.ca.gov/ORIM/Services/Page-Content/Office-of-Risk-and-Insurance-Management-Services-List-Folder/File-a-Government-Claim>

The State of California has a Master Agreement with the State Compensation Insurance Fund regarding workers' compensation benefits for all state employees, as required by the Labor Code.

A handwritten signature in cursive script that reads "Lynan Graf".

Associate Risk Analyst
Office of Risk and Insurance Management
Phone : (916) 376-5290
Fax: (916) 376-5275
Lynan.graf@dgs.ca.gov



Governor Gavin Newsom

June 7, 2021

**STATE OF CALIFORNIA AUTOMOBILE
LIABILITY / PHYSICAL DAMAGE
FISCAL YEAR JULY 1, 2021 / JUNE 30, 2022**

To Whom It May Concern:

Please accept this letter as certification that the State of California has elected to be self-insured for liability and physical damage arising out of the ownership, maintenance, and operation of land motor vehicles.

Under this program, the Office of Risk and Insurance Management administers liability claims arising out of the operation of the vehicle. Physical Damage to such vehicle may be reimbursed by the Employing State Agency in accordance with State Administrative Manual (SAM) sections 2420 and 4116.

Sincerely,

A handwritten signature in black ink that reads "Lynan Graf". The signature is written in a cursive style.

Lynan Graf
Department of General Services
Associate Risk Analyst
(916) 376-5290
Lynan.Graf@dgs.ca.gov

EXHIBIT B
(Standard Agreement)

BUDGET DETAIL AND PAYMENT PROVISIONS

A. Invoicing and Payment

1. The maximum amount payable under this Agreement shall not exceed \$0.00. Shown below are the amounts that cannot be exceeded for each of the fiscal year(s):

21/22	\$0.00
22/23	\$0.00
23/24	\$0.00

2. For services satisfactorily rendered, and upon receipt and approval of the invoice(s), County agrees to pay CDSS for said services in accordance with the rates specified below:

a. Invoicing for Family Evaluations

- i. If Family Evaluations were identified in Exhibit A, Section VII, as part of this Agreement, CDSS shall provide quarterly invoices in arrears for each quarter in which the Family Evaluation services were completed. The quarterly invoices shall include for each completed Family Evaluation the non-federal cost per case rate.
- ii. The CDSS shall track each Family Evaluation and invoice for the non-federal share of \$1,683.00 per each Family Evaluation.¹ CDSS shall not invoice for the amount of the services involving the federal funds share. The non-federal share of costs for each fiscal year shall be subject to change based on the applicable federal discount rate for that year.
- iii. The County shall pay CDSS quarterly for the completed Family Evaluations. For payment the County shall draw down funds from the General Fund RFA allocation. Once the total RFA allocation is

¹ The estimated cost to complete each Family Evaluation is \$2,305.00. The federal funds share is \$622.00.

**EXHIBIT B
(Standard Agreement)**

exceeded, the County shall use its Local Revenue Fund (LRF) for subsequent payment(s).

- iv. If it is determined by CDSS that the average family evaluation greatly exceeds the estimated hours, CDSS shall provide the documentation regarding the number of hours to the County. For any extension of this Agreement or subsequent agreement for these services the amount paid to CDSS may be increased for the next fiscal year(s).
- v. If the Exhibit A identifies that CDSS shall provide only a portion of the County's Family Evaluations, the cost of the Family Evaluation shall be the same as identified in section A, paragraph 2 (a) (ii), above.

b. Invoicing for Complaint Investigations

- i. If Complaint Investigations were identified in Exhibit A, Section VII, as part of this Agreement, CDSS shall provide quarterly invoices in arrears for each quarter in which the Complaint Investigations were completed. The quarterly invoices shall include, for each completed complaint investigation, the non-federal cost per case rate.
- ii. The CDSS shall track each Complaint Investigation and invoice for the non-federal cost of \$1,453.00.² CDSS shall not invoice for the amount of the services involving the federal funds share. The non-federal share of costs for each fiscal year shall be subject to change based on the applicable federal discount rate for that year.
- iii. The County shall pay CDSS quarterly. For payment the County shall draw down funds from the General Fund RFA allocation. Once the total RFA allocation is exceeded, the County shall use its LRF for subsequent payment(s).
- iv. If it is determined by CDSS that the average complaint investigation greatly exceeds the estimated hours, CDSS shall provide the documentation regarding the number of hours to the County. For any

² The estimated cost to complete each Complaint Investigation is \$1,991.00. The federal funds share is \$538.00.

EXHIBIT B
(Standard Agreement)

extension of this Agreement or subsequent agreement for these services the amount paid to CDSS may be increased for the next fiscal year(s).

- v. If the Exhibit A identifies that CDSS shall provide only a portion of the County's Complaint Investigations, the cost of the Complaint Investigation shall be the same as identified in this Exhibit B, section A, paragraph 2 (b)(ii), above.
- c. Invoicing for Home Health and Safety Assessments
 - i. If Home Health and Safety Assessments were identified in Exhibit A, Section VII, as part of this Agreement, CDSS shall provide quarterly invoices in arrears for each quarter in which the Home Health and Safety Assessments services were completed. The quarterly invoices shall include, for each open Home Health and Safety Assessment, the non-federal cost per case rate.
 - ii. The CDSS shall track each Home Health and Safety Assessment and invoice for the non-federal share of cost of \$474.00 per each Home Health and Safety Assessment.³ CDSS shall not invoice for the amount of the services involving the federal funds share. The non-federal share of costs for each fiscal shall be subject to change based on the applicable federal discount rate for that year.
 - iii. The County shall pay CDSS quarterly. For Payment the County shall draw down funds from the General Fund RFA allocation. Once the total RFA allocation is exceeded, the County shall use its Local Revenue Fund (LRF) for subsequent payment(s).
 - iv. If it is determined by CDSS that the average Home Health and Safety Assessment greatly exceeds the estimated hours, CDSS shall provide the documentation regarding the number of hours to the County. For any extension of this Agreement or subsequent agreement for these

³ The estimated cost to complete each Home, Health and Safety Assessment is \$649.00. The federal funds share is \$175.00.

EXHIBIT B
(Standard Agreement)

services the amount paid to CDSS may be increased for the next fiscal year(s).

- v. If the Exhibit A identifies that CDSS shall provide only a portion of the County's Home Health and Safety Assessments, the cost of the Home Health and Safety Assessments shall be the same as identified in this Exhibit B, section A, paragraph 2 (c)(ii), above.
3. The County shall be responsible for payment of the contracted services and activities provided by CDSS in accordance with rates above from the following sources and in the following order:
 - * General Fund Resource Family Approval allocation (if such exists in the State Budget);
 - * the County's 2011 Realignment LRF; and
 - * other County funds.
4. Continuation of Services

In the event this Agreement expires or is terminated with open Family Evaluations, Complaint Investigations, Home Health and Safety Assessments or Legal Consultations or Legal Representation on Appeals/SHD and OAH Hearings, CDSS may complete such actions in accordance with the terms of this Agreement; submit invoices as identified in this Exhibit B, withhold a corresponding portion of the RFA Allocation to complete such activities from a current or subsequent fiscal year, and receive payment from the County from its LRF for a current or subsequent fiscal year.
5. Cost Increase

During the term of this Agreement, and as the Budget Act allows, CDSS and the County may approve increases in the service levels for each of the services provided by CDSS and increase the amount that the County shall pay CDSS from the County's General Fund RFA allocation and the LRF.
6. Invoices shall include the Agreement No. 21-5031 and Index Code 2552 and shall be submitted in triplicate or as otherwise requested by the County not more frequently than quarterly in arrears to:

**EXHIBIT B
(Standard Agreement)**

Napa County Health and Human Services Agency
2751 Napa Valley Corporate Drive, Building B
Napa, CA 94558
Attn: Noelle Poulsen, Staff Services Analyst II

7. Should the County receive services in excess of \$750,000 in federal assistance, Invoices shall include the CFDA number: 93.658 and the CFDA Program Title: Resource Family Approval.

Any invoices submitted without the above referenced information may be returned to CDSS for reprocessing.

8. For each invoice, the County shall route to the appropriate personnel responsible for the prompt review and payment. For disputed invoices, if any, the County shall specifically identify those services which are in dispute, for which additional information is necessary, in its subsequent correspondence with CDSS.
9. Undisputed invoices shall be paid promptly, and no later than 45 days from receipt of the original invoice. The County shall also pay for those services which are undisputed within 45 days of receipt of the original invoice.

B. State Budget Contingency Clause

1. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, CDSS shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
2. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, CDSS shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Contractor to reflect the reduced amount.

C. For Contracts with Federal Funds

1. 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

EXHIBIT B
(Standard Agreement)

program and fiscal delays which would occur if the Agreement were executed after that determination was made.

2. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the term of this Agreement for the purposes of this program. 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.
3. 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.
4. CDSS, at its option, may terminate this Agreement upon 30-days notice, or to amend the Agreement to reflect any reduction in Federal funds.

D. Review

Each party reserves the right to review service levels and billing procedures as they impact charges against this Agreement.



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-895

TO: Board of Supervisors
FROM: Jennifer Yasumoto, Director Health & Human Services
REPORT BY: JoAnn Melgar, Staff Services Analyst II
SUBJECT: Removal of Capital Assets from Health and Human Services Agency Inventory

RECOMMENDATION

Director of Health and Human Services requests the following:

1. Declare capital asset property as surplus and no longer required for public use; and
2. Authorize removal of capital assets from the Health and Human Services Agency capital asset inventory.

EXECUTIVE SUMMARY

The County purchased a 10-inch Kaultronics Dish System in 1997, which was installed on Building G at the previous location of the Health and Human Services Agency (HHSA) on Old Sonoma Road. The dish system has not been used for many years and was recently removed from the building on Old Sonoma Road. Staff is requesting permission to remove this item from the HHSA capital asset list and dispose of this property.

In addition, in 2007 the County acquired four Power Edge Servers with support coverage provided by Dell. The County's ITS Department managed these servers. When support for the servers expired in 2013, they were disposed of by ITS because they were no longer viable as a resource. Staff is requesting permission to remove these items from the HHSA capital asset list.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Is the general fund affected?	No
County Strategic Plan pillar addressed:	Effective and Open Government

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.

BACKGROUND AND DISCUSSION

Pursuant to California Government Code, Article 7, section 25504, the County Purchasing Agent, which is the County Executive Officer in Napa County, may sell, lease, or dispose of any personal property belonging to the county that is not required for public use, subject to such regulations as may be provided by the Board of Supervisors. Today's requested action will enable disposal of a Kaultronics Dish System that is no longer needed and four Power Edge Servers that were previously disposed of and removal of these items from the HHS capital assets list.



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-908

TO: Board of Supervisors
FROM: Jennifer Yasumoto, Director Health & Human Services
REPORT BY: JoAnn Melgar, Staff Services Analyst II
SUBJECT: Agreement with On the Move, Inc. (Transitional Housing Program)

RECOMMENDATION

Director of Health and Human Services requests approval of and authorization for the Chair to sign Agreement No. 220137B with On the Move, Inc. for a maximum of \$26,400 for the term October 19, 2021 through June 30, 2023 for the transitional housing program.

EXECUTIVE SUMMARY

The California Department of Housing and Community Development has allocated \$26,400 to the County for the Transitional Housing Program for the purpose of helping young adults, aged 18-25 years, to secure and maintain housing, with priority given to young adults formerly in the foster care system and probation. The amount of this allocation is based on the County's percentage of the total statewide number of young adults aged 18-25 years in foster care.

The purpose of today's requested action is to approve an Agreement with On the Move, Inc. to carry out the Transitional Housing Program by assisting this population with securing and maintaining housing. The proposed Agreement begins October 19, 2021 and terminates June 30, 2023 with a contract maximum of \$26,400. On the Move, Inc. is a local vendor.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	N/A
Is it Mandatory or Discretionary?	Mandatory
Discretionary Justification:	N/A
Is the general fund affected?	No
Future fiscal impact:	None

Consequences if not approved:	If this agreement is not approved the agency will be unable to contract with On The Move for the proposed transitional housing services for youth.
County Strategic Plan pillar addressed:	Healthy, Safe, and Welcoming Place to Live, Work, and Visit
Additional Information	N/A

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Click or tap here to enter text.

BACKGROUND AND DISCUSSION

Napa County's Transitional Housing Program grant allocation is in the amount of \$26,400 for the grant term ending on June 30, 2023. This funding will enable Child Welfare Services to continue to work with community partners to secure, procure, and maintain housing for youth formerly in the foster care or probation systems. The Transitional Housing Program is especially important for Transitional Age Youth (TAY) (ages 18-25) as they transition to independent living arrangements

Pursuant to this Agreement, On the Move, Inc. will provide the following services:

- Provide housing navigation services to support youth in locating safe and stable housing.
- Support youth to work with landlord to secure rental agreement/lease documents.
- Provide access to direct housing support including payment of security deposit and first month rent.
- Provide case management services to support youth in maintaining housing.
- Support youth through housing insecurity by providing access to emergency rental assistance in order to prevent homelessness.
- Actively communicate with the youth's support systems, including ongoing communication with Social Workers and/or Case Workers.
- Participate in the Napa Continuum of Care in order to represent the needs of transitional age youth.
- Conduct outreach activities to TAY at specific locations and events in the community.
- Connect TAY to housing resources by submitting applications.

OTM was selected because they are already working with TAY by providing services through their agreement with HHSA for the Independent Living Program. This uniquely positions OTM to provide transitional housing services to the TAY population. On the Move, Inc. is a local vendor.

NAPA COUNTY AGREEMENT NO. 220137B
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of this ____ day of _____, 2021, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and **ON THE MOVE, INC**, 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 housing stability services to help young adults aged 18-25 years to secure and maintain housing, with priority given to young adults formerly in the foster care system and probation; 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 By _____ ALFREDO PEDROZA, Chair of the Board of Supervisors ATTEST: NEHA HOSKINS, Clerk of the Board By: _____ DATE APPROVED BY THE BOARD: _____ Processed by: _____ Deputy	<div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;">CONTRACTOR</div> Signature <div style="text-align: center; margin-top: 10px;"><i>Alissa Abdo</i></div> Printed Name of Person Signing, and Title, if applicable ALISSA ABDO, Executive Director Signature Printed Name of Person Signing, and Title, if applicable
---	---

Maximum Amount of this Agreement: \$26,400 Term Expires: June 30, 2023 Automatic renewal of term applies does not apply	APPROVED AS TO FORM BY NAPA COUNTY COUNSEL By: <u>Douglas V. Parker (via e-sign)</u> Date: <u>September 7, 2021</u>
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TERMS AND CONDITIONS OF NAPA COUNTY AGREEMENT NO. _____

SECTION 1. Contract Administration

For purposes of this Agreement, the following shall apply:

- 1.1 "Department" shall mean: Health and Human Services
- 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-Johnson, Deputy Director/Child Welfare Services
- 1.5 The Contract Contact Person for CONTRACTOR shall be: Amber Twitchell, 780 Lincoln Avenue, Napa, CA 94550
- 1.6 CONTRACTOR is a ☐ sole proprietor ☐ partnership ☒ corporation ☐ public agency ☐ other (specify) .
- 1.7 The source of funding for this Agreement shall be: Grant allocation from the Department of Housing and Community Development
- 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: Transitional Housing Program (THP)--Agreement Number: 20-THP-15878

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":

- ☒ (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.
- ☐ (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 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.

3.5 Section 2.1(b) of the General Terms and Conditions does not apply to this Agreement. The term of this Agreement shall commence on approval by the Board of supervisors and shall expire on **June 30, 2023**, 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). 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 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).

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 Expense Reimbursement (attached)

Exhibit C: "Section 2, General Terms and Conditions, Version 12" (attached)

Exhibit D: Vendor Assurance of Compliance with the Napa County Welfare Department Nondiscrimination in State and Federally Assisted Programs

EXHIBIT A **SCOPE OF WORK**

I. BACKGROUND

Pursuant to item 2240-102-0001 of Section 2.00 of the Budget Act of 2020 (Chapter 6 of the Statutes of 2020) and Chapter 11.7 (Commencing with Section 50807) of Part 2 of Division 31 of Health and Safety Code, by which the Department of Housing and Community Development (HCD) shall allocate \$8 million in funding to counties for the purpose of housing stability to help young adults aged 18-25 years secure and maintain housing, with priority given to young adults formerly in the foster care system and probation. The allocation of \$26,400 was based on the County's percentage of the total statewide number of young adults aged 18-25 years in foster care.

II. SERVICES

CONTRACTOR shall provide the following services with priority given to young adults aged 18-25 years formerly 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 youth in locating safe and stable housing.
 - Supporting youth to work with landlord to secure rental agreement/lease documents.
 - 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 youth in maintaining housing.
 - Supporting youth through 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 the Homeless Continuum of Care.
 - Actively communicating with the youth's support systems including ongoing communication with Social Workers and/or Case Workers.
 - Participation in the Napa Continuum of Care in order to represent the needs of transitional age youth.
- D. Outreach and targeting to serve those with the most severe needs, 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.

- Connecting TAY to housing resources by submitting applications.

E. Contractor shall complete an intake form for each youth assisted.

- 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 two years.

B. CONTRACTOR shall submit a completed annual report each year by July 15, following the distribution of THP program funds for the previous fiscal year (July 1 – June 30). The Annual Report is provided by HCD and shall be submitted electronically to County program staff, who will then submit the report to HCD no later than July 31. The Annual Report addresses the following:

- How many people were served?
- What were the funds used for?
- Amount expended to identify and assist housing services for young adults (18-25)
- Amount expended to assist young adult (18-25) in foster care or probation systems to secure and maintain housing.
- Amount expended to improve coordination of services and linkages to key resources across the community including those within CWS and local CoC.
- Who were the housing navigator(s)?
- How many people served were in the foster care system?
- How many people served were on probation?

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 youth receiving Transitional Housing Program 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 youth in the administration of the Transitional Housing Program.

F. COUNTY program staff shall schedule and participate in quarterly meetings of CONTRACTOR and COUNTY staff to discuss the number of youth receiving Transitional Housing Program Services, the

referral process and other operational issues. Expenditures to-date and the need for possible contract amendments are reviewed.

- G. COUNTY program staff shall be available for direct contact by the CONTRACTOR staff in order to maintain open communication and sharing of information regarding youth in the administration of the Transitional Housing Program.
- H. COUNTY program staff shall provide CONTRACTOR with all regulations and policies related to administering the Transitional Housing Program.

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 it 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 Child Welfare Services 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 EXPENSE REIMBURSEMENT

CONTRACTOR shall be compensated up to a maximum of \$26,400 for the term ending on June 30, 2023.

Direct Costs:	
• Security Deposit	
• 1 st Month Rent	\$26,400
• Emergency Rental Assistance (homelessness prevention)	
Total Contract Maximum	\$26,400

CONTRACTOR agrees that all funds shall be used to help young adults aged 18-25 years secure and maintain housing.

CONTRACTOR agrees that priority shall be given to young adults 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 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 name of staff person who administered rental payments, date of service, service provided, and name of youth receiving service.

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, 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/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) HSA Contractor Security Requirements. Whenever CONTRACTOR utilizes their own equipment to perform work under this Agreement, CONTRACTOR warrants that they have reviewed "HSA Contractor Security Requirements" and can adhere to the minimum standards at all time. A copy of "HSA 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
VENDOR ASSURANCE OF COMPLIANCE WITH THE NAPA COUNTY WELFARE
DEPARTMENT NONDISCRIMINATION IN STATE AND FEDERALLY ASSISTED PROGRAMS


NAME OF VENDOR/RECIPIENT: ON THE MOVE, INC.

HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended and in particular section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and (j); California Government Code section 4450; Title 22, California Code of Regulations section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE VENDOR/RECIPIENT HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the vendor/recipient agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the vendor/recipient directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

Signature 
ALISSA ABDO, Executive Director



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-932

TO: Board of Supervisors
FROM: Jennifer Yasumoto - Director Health & Human Services
REPORT BY: JoAnn Melgar, Staff Services Analyst II
SUBJECT: Agreement with FirstWatch Solutions, Inc.

RECOMMENDATION

Director of Health and Human Services requests approval of and authorization for the Chair to sign Agreement No. 220136B with FirstWatch Solutions, Inc. for a maximum of \$240,000 for the term October 19, 2021 through October 18, 2026 to provide a software license to Napa County Emergency Medical Services (EMS) to enable independent verification that the ambulance provider's contractual obligations are being met.

EXECUTIVE SUMMARY

The Director of Health and Human Services requests approval of and authorization for the Chair to sign an agreement FirstWatch Solutions, Inc. ("FirstWatch") to provide a license to Emergency Medical Services (EMS) to enable independent verification that contractual obligations are being met by the County's contracted ambulance provider, American Medical Response West (AMR). The ambulance services are the subject of a separate contract between the County and AMR. FirstWatch is a software vendor that provides a real-time, web-enabled tool for use by providers and agencies to simplify and manage response times based on computerized automated dispatch data. FirstWatch is currently providing this service for AMR. EMS also currently uses FirstWatch to facilitate contract compliance oversight. FirstPass, a suite option offered by FirstWatch, provides the ability to monitor and analyze patient care data, identifying deviations rapidly, consistently, and automatically. Combined with AMR's electronic patient care record (ePCR) program, data is collected and reviewed quickly without data loss due to entry errors.

Per the Agreement with AMR approved by the Board of Supervisors on September 14, 2021, AMR will reimburse the County for all costs associated with the FirstWatch Agreement, which has an estimated maximum of \$240,000 for the term October 19, 2021 through October 18, 2026.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes

Where is it budgeted?	Health & Human Services Public Health
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Approval of the requested action is discretionary in that there is no mandate to contract with this provider. However, Napa County EMS is seeking an independent license, paid for by AMR to establish metrics for independent verification of operations and clinical metrics, consistent with the AMR Agreement.
Is the general fund affected?	No
Future fiscal impact:	This Agreement terminates on October 18, 2026. Appropriations have been included in the approved Fiscal Year 2021-2022 budget and future fiscal years will be budgeted accordingly.
Consequences if not approved:	By entering this Agreement Napa County takes on the responsibility of establishing the mechanisms of independent verification necessary to hold the ambulance provider accountable to the AMR Agreement.
County Strategic Plan pillar addressed:	Healthy, Safe, and Welcoming Place to Live, Work, and Visit
Additional Information	N/A

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.

BACKGROUND AND DISCUSSION

Napa County EMS Agency currently utilizes the FirstWatch surveillance platform provided by AMR. The Online Compliance Utility is a real-time web-enabled tool for use by providers and agencies to simplify and manage response times based on the Napa Central Dispatch real-time computerized automated dispatch (CAD) data. The web-based tool provides interactive queues with a consistent look and feel for both the provider and agency, allowing on-line review of late calls based on system needs and contract deliverables. FirstPass, a suite option offered by FirstWatch, provides the ability to monitor and analyze patient care data, identifying deviations rapidly, consistently, and automatically. Combined with AMR's electronic patient care record (ePCR) program, data is collected and reviewed quickly without data loss due to entry errors.

Currently, AMR manages this system. However, Napa County EMS is seeking an independent license, paid for by AMR, to establish metrics for independent verification of operations and clinical metrics, consistent with the current ambulance contract.

FIRSTWATCH SOLUTIONS, INC. SOFTWARE LICENSE AGREEMENT

1. *Parties; Effective Date.* This Software License Agreement ("Agreement") is between FirstWatch Solutions, Inc., 1930 Palomar Point Way., Suite 101, Carlsbad, California 92008 ("FirstWatch") and the undersigned software user ("Client" or "Agency"). This Agreement is effective as of the _____ day of _____, 2021 ("Effective Date") for a term of five (5) years ending on the _____ day of _____, 2026 unless terminated earlier in accordance with Paragraph 12 of this Agreement.

2. *Purpose of Agreement.* FirstWatch is a provider of data monitoring and biosurveillance software and related services to organizations and agencies in the fields of public health and public safety. Client desires a license to use the FirstWatch software identified on Schedule A ("Software") according to the terms of this Agreement.

3. *Grant of License.* FirstWatch grants Client a license to load and execute the Software on a computer located at the Site identified on Schedule A for use by its employees and staff in connection with its syndromic surveillance system. Client may make backup and archival copies of the Software.

4. *License Term; Maintenance Services.* The term of the Software license is perpetual. However, Client shall be entitled to Software updates, upgrades, enhancements, new versions, bug fixes, other improvements to the Software and access to the FirstWatch Subscriber Site, and to technical assistance relating to the Software, for the term(s) described in Schedule A of this Software License Agreement and with payment in full for the maintenance portion of the agreement. The term of Software Maintenance and Support commences upon the date of Software Acceptance.

5. *FirstWatch Intellectual Property Rights.* The license is nontransferable and nonassignable without the prior, written permission of FirstWatch. Client may not modify, enhance, or create derivative works, decompile, disassemble, or reverse engineer the Software, or make copies other than as authorized in Section 3. All rights not licensed are reserved to FirstWatch and no rights may be implied. FirstWatch retains all intellectual property rights in the Software, and Client agrees to implement software protection measures designed to prevent unauthorized use and copying of the Software.

6. *Delivery, Installation, and Testing.* Client is responsible for acquiring all hardware, equipment, and other software; for preparing the site (including physical and electrical requirements); for properly configuring the computing environment on which the Software will reside, and for installing the Software in accordance with Schedule A and any other requirements provided by

FirstWatch in writing. Client shall test the Software within ten (10) days after FirstWatch has enabled Client's access to the Software.

7. *Acceptance.* The Software is Accepted upon the earlier of when (a) Client determines that the Software performs in accordance with the criteria set forth in the Acceptance Test Plan ("ATP"), set forth in Schedule C, or (b) the Software has been installed for thirty (30) days and Client has not advised FirstWatch that the Software fails to materially conform to the ATP. If the Software does not so perform for reasons inherent in the Software (and not, for example, third party hardware, software, equipment, or system configuration), FirstWatch will promptly replace the Software with materially conforming Software. Client shall test the revised Software and, unless the parties agree otherwise, Client may either (1) Accept the Software as conforming, (2) Accept the Software AS IS, or (3) reject the Software. If Client rejects the Software, it shall delete the Software from its computing system, shall certify in writing such deletion, and FirstWatch shall refund all Software license fees paid by Client. Client shall have thirty (30) days after initial delivery to finally Accept or reject the Software. The foregoing is the sole remedy available in the event of nonconforming Software.

8. *Client Satisfaction.* FirstWatch desires that Client is fully satisfied with the Software and Services. If, within ninety (90) days after acceptance, for any reason, Client is not satisfied with the Software, Client may elect to return the Software and receive a full refund of all Software license fees paid to FirstWatch.

9. *Fees and Payments.* Client shall pay all fees according to the terms of Schedule A, and to pay a late fee of one and a half percent (1.5%) interest per month on all overdue amounts for any fees due and payable under the Agreement. Client shall pay for all travel-related expenses (e.g., ground transportation, accommodations, food) incurred by FirstWatch at the request of Client and approved by Client in writing, for Software-related services such as on-site installation, training, customization, integration, support, and maintenance. Such additional services will be pursuant to a separate written agreement. Client is responsible for payment of all sales and/or use taxes arising out of its use of the Software.

10. *Limited Warranties; Exclusions.*

FirstWatch warrants that during the Acceptance testing period, and while Client is receiving covered Maintenance Services per section 4 of this Agreement, the Software will perform in substantial conformance with the ATP, provided that the Software has been used as specified by FirstWatch. FirstWatch will use its best

efforts to correct any material nonconformance within ten (10) business days after receipt of written notice of such nonconformance and Client's provision of any data, output, or other documentation or description of the nonconformance.

The limited software warranty applies only to Software used in accordance with the Agreement and does not apply if the Software media or Software code has been subject to accident, misuse, or modification by a party other than FirstWatch or as authorized by FirstWatch.

FirstWatch does not warrant that the functions contained in the Software will meet Client's specific needs, industry requirements, be error-free, or operate without interruption. The remedies in this Section 10 are the sole and exclusive remedies provided by FirstWatch relating to the Software.

THESE LIMITED WARRANTIES ARE IN LIEU OF, AND CLIENT HEREBY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. *Limitation of Liability.* Neither party shall be liable for indirect, incidental, consequential, special, punitive or exemplary damages, or for lost profits or business interruption losses, in connection with the Software or this Agreement, regardless of whether it has been made aware of their possibility. Other than amounts due to a party pursuant to Sections 9 or 13, or the breach of Sections 4, 5, or 14, in no event shall either party be liable to the other, under any theory of recovery, including contract, negligence, strict liability, warranty or products liability, in an amount in excess of the amount Client paid to FirstWatch for products and services. Any claims relating to this Agreement shall be brought within two (2) years after the occurrence of the event giving rise to the cause of action.

12. *Termination.* Either party may terminate this Agreement if there is a material breach by either party that is not cured within thirty (30) days after receipt of written notice of such breach. Upon termination of this Agreement, Client shall promptly discontinue using the Software and return to FirstWatch, or certify in writing, the destruction of all Software, Documentation, and FirstWatch training materials.

13. Insurance Provisions

Insurance. FIRSTWATCH 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, FIRSTWATCH shall provide workers' compensation insurance for the performance of any of FIRSTWATCH'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 CLIENT with certification of all such coverages upon request by CLIENT's Risk Manager.

(b) *Liability Insurance.* FIRSTWATCH 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 FIRSTWATCH or any officer, agent, or employee of FIRSTWATCH 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 FIRSTWATCH 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 FIRSTWATCH'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 FIRSTWATCH 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 FIRSTWATCH or FIRSTWATCH's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, FIRSTWATCH 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 CLIENT's Risk Manager, demonstrated by other evidence of coverage acceptable to CLIENT's Risk Manager, which shall be filed by FIRSTWATCH with the Health and Human Services Agency prior to commencement of performance of any of FIRSTWATCH's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its CLIENT number or title and department; shall be kept current during the term of this Agreement; shall provide that CLIENT 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, FIRSTWATCH shall also file with the evidence of coverage an endorsement from the insurance provider naming CLIENT, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, FIRSTWATCH 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 FIRSTWATCH not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of CLIENT shall pertain only to liability for activities of FIRSTWATCH under this Agreement, and that the insurance provided is primary coverage to CLIENT with respect to any insurance or self-insurance programs maintained by CLIENT. 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 CLIENT's Risk Manager, FIRSTWATCH 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, CLIENT's Risk Manager, which approval shall not be denied unless the CLIENT'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 FIRSTWATCH by this Agreement. At the option of and upon request by CLIENT'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 CLIENT, its officers, employees, agents and volunteers or FIRSTWATCH shall procure a bond guaranteeing payment of losses and related

investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. FIRSTWATCH 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 FIRSTWATCH, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

14. Indemnification.

FirstWatch agrees to defend, and hereby indemnifies, Client, from all damages, losses, fees, and expenses awarded by a court of competent jurisdiction, or reached through a settlement, arising out of Client's use of the Software or Documentation when such claim is based upon a third party claim that the Software infringes a U.S. patent, trademark, copyright or trade secret; provided that (a) Client promptly notifies FirstWatch in writing of such claim; (b) FirstWatch has sole control over the investigation, litigation and negotiation of such claim; (c) Client is current in its payments and in compliance with its obligations under this Agreement; and (d) Client reasonably cooperate, at the expense of FirstWatch, in the defense or settlement of such claim. This indemnification applies only to the Software delivered by FirstWatch and shall not apply if the Software has been modified by party other than FirstWatch, or if the Software has been combined with (or used in connection with) other products and used as a part of an infringing process or method which, but for the combination, would not infringe the intellectual property rights of such third party.

If the Software becomes, or in the opinion of FirstWatch is likely to become, the subject of such a claim, then FirstWatch may either (a) procure (at its expense) Client's right to continue using the Software, or (b) replace or modify the Software to avoid the claim of infringement. If neither of the foregoing alternatives is reasonably available to FirstWatch, then FirstWatch may terminate this license and refund to Client the license fees paid for the Software on a straight-line three-year depreciation basis. This agreement states the entire liability of FirstWatch with respect to third party claims of intellectual property infringement.

15. Confidentiality.

FirstWatch and Client may have access to information that the other considers to be confidential, private, or a trade secret. This information may include, but is not limited to, patient or other data, the Software, technical know-how, technical specifications, software code, manners of conducting business and operations, strategic business plans, systems, results of testing,

financial information, and third-party information ("Information").

Each party shall use the other's Information only to perform its obligations under, and for the purposes of, the Agreement. Neither party shall use the Information of the other for the benefit of a third party. Each party shall maintain the confidentiality of all Information in the same manner in which it protects its own information of like kind, but in no event shall either party take less than reasonable precautions to prevent the unauthorized disclosure or use of the Information.

Upon termination of the Agreement, or upon a party's request, each party shall return to the other all Information of the other in its possession. All provisions of the Agreement relating to confidentiality, ownership, and limitations of liability shall survive the termination of the Agreement.

16. *Ownership of Data.* The parties acknowledge and agree that all Client data ("Data"), is and shall remain the exclusive property of Client. FirstWatch acknowledges that in performing its obligations under the Agreement it may have access to Client networks and Data. FirstWatch will use and access such Data only as necessary for the purpose of providing the services and supporting the Software as agreed.

17. *HIPAA.* With respect to any protected health information ("PHI") and to the extent FirstWatch is subject to the provisions of the Health Insurance Portability and Accountability Act as a Business Associate, FirstWatch shall (a) not use or disclose PHI other than as permitted or required by any agreement between FirstWatch and Client, or as required by law, (b) use appropriate safeguards to prevent use or disclosure of the PHI, (c) report to Client any unauthorized use or disclosure of the PHI of which it becomes aware, (d) ensure that any agent or subcontractor that accesses PHI in order to assist FirstWatch in providing the Services will be bound by the provisions of this Section, (e) reasonably cooperate with Client to make its internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI available to a governmental agency in the event a governmental agency requests such information, (f) document all its disclosures of PHI and information related to such disclosures, and notify Client of such disclosures, (g) return or destroy all PHI upon termination of the Services under this Agreement. If the parties enter into a separate agreement regarding the use of protected health information, the terms of that separate agreement shall take precedence and control over the terms of this Section 16.

18. *Cooperative Purchasing.* If agreed to by Client and FirstWatch, another public body may utilize this contract. FirstWatch shall deal directly with any public body authorized to use the contract. Client, its officials and staff are not responsible for placement of orders, invoicing, payments, contractual disputes, or any other transactions between FirstWatch and any other public bodies, and in no event shall Client, its officials or staff

be responsible for any costs, damages or injury resulting to any party from use of a Client Contract. Client assumes no responsibility for any notification of the availability of the contract for use by other public bodies, but FirstWatch may conduct such notification.

18. *General.*

All required communications shall be in writing and addressed to the recipient party at its address set forth in this Agreement, addressed to the person who signed the Agreement on behalf of such party, or to such address and person as may be designated by such party in writing. All communications are deemed given when hand-delivered; or if mailed, by registered mail with verification of receipt, upon date of mailing; or if by electronic mail or facsimile, when received (with verification of transmission sent promptly to the receiving party along with a hard copy of the communication).

Any part of the Agreement held to be invalid or unenforceable, shall be revised so as to make it valid and enforceable, consistent with the intent of the parties expressed in that provision. All other provisions of the Agreement will remain in full force and effect. The remedies accorded FirstWatch are cumulative and in addition to those provided by law.

The Agreement, all Schedules (A-C), and any amendments thereto constitute the entire understanding of the parties with respect to the subject matter of the Agreement and replaces all prior and contemporaneous written and oral communications, promises, or understandings. The Agreement shall be governed by the laws of the State of California and may be amended only by a writing signed on behalf of both parties. Electronic mail shall not be deemed to constitute a signed writing for purposes of this modification provision unless expressly identified as an amendment. No waiver of any right or remedy will be effective unless given in writing and signed on behalf of the party making such waiver. No purchase order or other administrative document will amend the Agreement unless signed by a representative of both parties and identified as an amendment to the Agreement, even if accepted by the receiving party without objection.

The Parties may not assign any rights or delegate any duties under the Agreement without the prior, written consent of the other Party, which will not be unreasonably withheld, and any attempt to do so without consent will be void. However, no consent shall be required in the case of a Party's transfer of all or substantially all of its business or assets by merger, asset sale, or other similar transaction. The Agreement is binding upon the parties' successors and permitted assigns.

SIGNATURE PAGE FOLLOWS

AGREED AND ACCEPTED:

FirstWatch Solutions, Inc.

Date: 10/07/2021By: 
TODD STOUT, President

Client Name and Address:

Napa County Health and Human Services Agency
2751 Napa Valley Corporate Drive, Bldg. B
Napa, CA, 94558

Date: _____

By: _____
ALFREDO PEDROZA
Title: Chair, Board of SupervisorsAPPROVED AS TO FORM
Office of County Counsel

By: _____ Rachel L. Ross (e-signature)

Date: 10/06/21

Deputy County Counsel

Date: 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: _____

Date: _____

Schedule A:

Project Services, Pricing & Payment Schedule, Contact Information & Technical Specifications

Project Services:

- Single license of FirstWatch Thin-Client (Remote Data Gathering) Software installed on Client's dedicated FirstWatch PC/Server
 - All data integration with Client's Data Source/System integrated via:
 - Connectivity to a data source via ODBC or similar means;
 - or Text or XML *file* output for each incident from a Client-provided process (one or more files for each incident) that provides files on the dedicated FirstWatch PC/Server;
 - or client provided web services interface allowing FirstWatch to securely access, query and receive necessary data via a non-dedicated internet connection. Client provided web services interface will include the ability to encrypt and decrypt data and options to query live and historical data.
 - Data Shuttle, remote connectivity and other software and processes on Client's dedicated FirstWatch PC which work together to reliably and securely transmit data to the FirstWatch Data Center, and allow for remote support, using Client-provided, always-on Internet connectivity.
 - Linking of data sources requires, at a minimum, a unique key that exists within each data source in a useable format.
- Modify centrally located FirstWatch server-based processes, software and database as necessary to receive Client's data, import into FirstWatch database, and monitor for statistically-significant increases in volume or geographic clusters of calls which meet user-defined criteria.
- Provide up to fifty (50) Client-specific user login(s) and password(s) to allow up to fifty (50) simultaneous users on the FirstWatch subscriber Internet site. (Access by additional users may be purchased, and access via FirstWatch to other, 3rd-party services or tools, may be licensed separately.)
- Provide the ability for the Client to define all system included and client purchased "trigger sets" for monitoring by FirstWatch.
- Provide the ability for the Client to define up to fifty (50) alert recipients for each trigger, via a combination of email, text messaging, fax, or compatible paging system.
- Provide a default "All Events" trigger with monitoring and alerts to demonstrate complete functionality of system.

Pricing and Payment Schedule:

Client FirstWatch Pricing				
Line #	Description	Qty.	Unit	Extended
1	Base System License* (DS1 – Intergraph CAD)	1	\$20,381	\$20,381
2	Annual Support & Maintenance* (DS1)	1	\$4,483.82	\$4,483.82
3	Data Source Integration (DS1)	1	\$7,500	\$7,500
4	Installation / Configuration	1	\$2,500	\$2,500
5	Training / Trigger Consultation / Project Management	1	\$9,500	\$9,500
6	System License* (DS2 – ePCR (vendor to be determined by provider)	1	\$14,267	\$14,267
7	Annual Support & Maintenance* (DS2)	1	\$3,138.74	\$3,138.74
8	Data Source Integration (DS2)	1	\$7,500	\$7,500
9	Standard System Triggers (included)	20	Incl.	Incl.
10	Interactive Data Visualization Module (IDV)	1	Incl.	Incl.
11	Online Compliance Utility Module (OCU)	1	\$30,000	\$30,000
12	Online Compliance Utility Annual Support & Maintenance	1	\$6,600	\$6,600
13	FirstPass Module (FP)	1	\$30,000	\$30,000
14	FirstPass Annual Support & Maintenance	1	\$6,600	\$6,600
15	Total Price			\$142,470.56

* License and Maintenance costs are for monitoring Napa County Health & Human Services' EMS Calls. Assumptions are based on 15,000 annual incidents, and include a 'buffer' of plus or minus (±) 20% of the call volume.

"Client" FirstWatch Payment Schedule	
Project Initiation Payment: 50% >Invoiced for at Contract Execution	\$71,235.28
FirstWatch Base System (DS1) Installation Payment: 40% >Invoiced for at Base System Installation	\$56,988.22
FirstWatch Base System (DS1) Acceptance Payment: 10% >Invoiced for at Base System Acceptance (ATP)	\$14,247.06

Maintenance fees beyond the Term of this Agreement (1 Year) will recur and reflect then-current FirstWatch maintenance and support rates unless otherwise agreed on by both parties.
Annual Support Fee increase is projected (for budget purposes) at 3% per year.

Estimated Annual Support & Maintenance for Year 2	\$21,447.24
Estimated Annual Support & Maintenance for Year 3	\$22,090.65
Estimated Annual Support & Maintenance for Year 4	\$22,753.37
Estimated Annual Support & Maintenance for Year 5	\$23,435.97

Switching Data Sources against a "LIVE" OCU and/or FirstPass Module(s): Timing and Financial Considerations

At least a 90-day notice of a proposed data source change for the FirstWatch OCU and FirstPass Modules is *highly recommended* as it will allow both parties an opportunity to better prepare to be ready. Should less notice be given, FirstWatch will do its best to manage the required changes, but that may mean it may not be ready when needed.

*OCU Module

When customer has FirstWatch OCU enhancement module LIVE and switches to new CAD system; A Data Source Re-Configuration Fee of up to \$12,000 will be required to modify and validate OCU compliance tests and automated queue-based processes as well as OCU reports against customers new CAD system data. This is in addition to a \$7,500 new Data Source Interface fee for the base FirstWatch system (for total of \$19,500). When customer has OCU live under one response time compliance contract, and their response time compliance contract requirements are changed such that the OCU must be changed, there will be a Contract Re-Configuration Fee of up to \$6,000.

*FirstPass Module

When customer has FirstWatch FirstPass enhancement module LIVE and switches to new ePCR system; a FirstPass Re-Configuration Fee of up to \$12,000 will be required to modify and validate FirstPass protocol tests and automated queue-based processes and FirstPass reports against customers new ePCR system data. This is in addition to a \$7,500 new Data Source Interface fee (for total of \$19,500).

Contact Information:

Licensors Contact Tax ID No: 05- 0544884	Todd Stout, President FirstWatch® 1930 Palomar Point Way, Suite 101 Carlsbad, California, 92008	Phone : 760-943-9123 Fax : 760-942-8329 Email : admin@firstwatch.net
Client Contact	M Shaun Vincent Emergency Medical Services Administrator Napa County Health & Human Services 2751 Napa Valley Corporate Drive, Bldg. B Napa, CA 94558	Phone : 707-299-2155 Email : michael.vincent@countyofnapa.org

Technical Specifications:

FirstWatch Hardware Requirements:

Minimum (only if using existing equipment)	Preferred (required/minimum if new equipment)
Dedicated PC or Virtual Machine used exclusively for FirstWatch purpose	Dedicated Server or Virtual Machine used exclusively for FirstWatch purposes
Core i3 (Dual core or better)	Core i5 (Quad core or better)
4GB RAM or better	8GB RAM or better
256 GB Disc (Partition as appropriate)	500GB Disc (Partition as appropriate.)
1 GB Ethernet Card	1 GB Ethernet Card
Any recent generation Graphic card	Any recent generation Graphic card
Keyboard/Mouse/Monitor/KVM/Virtual Machine Access	Keyboard/Mouse/Monitor/KVM/Virtual Machine Access

FirstWatch Software Requirements:

Minimum	Preferred
Microsoft Windows Server 2012 or Windows 10 Professional including all the latest updates and patches loaded	Microsoft Windows Server 2016 (64bit) including all the latest updates
If the database to be monitored is MS SQL Server, SQL Server Management Studio needs to be installed. NOTE: For general installations, we do not need an instance of MS SQL Server installed on the server—just management studio tools.	If the database to be monitored is MS SQL Server, SQL Server Management Studio needs to be installed. NOTE: For general installations, we do not need an instance of MS SQL Server Database Engine installed on the server—just management studio tools.
ODBC driver or other licensed and approved connectivity to underlying database	ODBC driver or other licensed and approved connectivity to underlying database
Virus Protection Software of customer's choosing	Virus Protection Software of customer's choosing
WinZip or compatible software - Not Required if functionality included in Windows OS	WinZip or compatible software - Not Required if functionality included in Windows OS
Microsoft .NET Framework Version 4.0. (Installed with local FirstWatch Thin Client Software)	Microsoft .NET Framework Version 4.0. (Installed with local FirstWatch Thin Client Software)
Automated Time synchronization software or process of clients choosing. MS Windows OS feature is fine.	Automated Time synchronization software or process of clients choosing. MS Windows OS feature is fine.

Remote-Client Technical Specifications Continued

Connectivity, Firewall & Environment:
Always-on, high speed broadband Internet connectivity under customer specified and controlled security settings; Recommend static IP address with hardware firewall.
Read-only Network access to database(s) being monitored (ODBC connection)
Outbound only access for HTTPS (port 443) with access to *.firstwatch.net. IP Addresses for outbound whitelisting: 66.185.165.130/28, 66.185.165.131, 66.185.165.132, 66.185.165.144/29, 66.185.165.194/28, 66.185.165.195, 216.145.126.192/27, 38.70.192.112/28, 38.142.170.144/29, 38.104.122.120/29, 38.96.10.224/28.
For agencies using FirstWatch provided Cisco WebEx Remote Access Agent service for installation and support, it may be necessary to create an exception list for WebEx sites on the firewall or proxy to properly use WebEx services. In most cases, the IP Range that can be used to add an exception for the firewall or proxy is 64.68.96.0 - 64.68.127.255 and ports 80, 443 and 1280.
Local (not domain) server administrator account with access to specifications above.
To maximize system availability FirstWatch recommends remote-client hardware be located with other critical systems and when possible include UPS, back-up generator, monitored data circuits) and HVAC controlled secure environment.

Support:

Minimum
Allow FirstWatch access to the dedicated machine via WebEx Remote Access client services (or authorized substitute, including VPN). WebEx Remote Access client software provided with FirstWatch under maintenance and service agreement. If VPN or other connection requires additional hardware or software on client or support side, it will be the responsibility of the customer to supply it. FirstWatch understands that some agencies require attended remote access sessions and are fine with this approach when required.

Disclaimer: Although FirstWatch requires a dedicated machine for our applications, some clients have requested running the FirstWatch applications on a server that is shared with other applications. We have successfully deployed in a combination of these configurations and are willing to attempt an install in this environment if the client understands that there is risk involved. The risk is that if another process or application on the same machine renders the machine unresponsive, it could potentially stop the processing of the FirstWatch applications. Conversely, the FirstWatch applications may affect the other applications. Therefore, if the client decides to move forward in this manner and results in ongoing issues with FirstWatch applications, we will respectfully request that our system be transferred to a dedicated machine for the purpose of running the FirstWatch applications. FirstWatch staff will be happy to assist the client with reconfiguring the FirstWatch system on a new machine.

Schedule B:

FirstWatch Solutions, Inc. Business Associate Agreement Between FirstWatch Solutions, Inc. and Napa County Health & Human Services

This Exhibit shall constitute the Business Associate Agreement (the "Agreement") between **FirstWatch Solutions, Inc.**, (the "Business Associate") and Napa County (the "Covered Entity"), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, "Services"), that are identified in the Master Agreement (as defined below).

1. Purpose. This Agreement is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to "Protected Health Information" (as defined below) that the Business Associate may create, receive, maintain, transmit, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity, and that such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH Act").

2. Regulatory References. All references to regulatory Sections, Parts and Subparts in this Agreement are to Title 45 of the Code of Federal Regulations as in effect or as amended, and for which compliance is required, unless otherwise specified.

3. Definitions. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in Sections 160.103, 164.304 and 164.501.

(a) Business Associate. "Business Associate" shall mean the party identified above as the "Business Associate".

(b) Breach. "Breach" shall have the same meaning as the term "breach" in Section 164.402.

(c) Covered Entity. "Covered Entity" shall mean the County of Napa, a hybrid entity, and its designated covered components, which are subject to the HIPAA Rules.

(d) Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.

(e) Electronic Media. "Electronic Media" shall have the same meaning as the term is defined in Section 160.103.

(f) Electronic Protected Health Information. "Electronic Protected Health Information" ("EPHI") is a subset of Protected Health Information and means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

(g) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(h) Individual. "Individual" shall have the same meaning as the term "Individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

(i) Master Agreement. "Master Agreement" shall mean the contract or other agreement to which this Exhibit is attached and made a part of.

(j) Minimum Necessary. "Minimum Necessary" shall mean the minimum amount of Protected Health Information necessary for the intended purpose, as set forth at Sections

164.502(b) & 164.514(d): *Standard: Minimum Necessary.*

(k) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at Part 160 and Part 164, Subparts A and E.

(l) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 160.103, limited to the information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

(m) Required By Law. "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.

(n) Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services ("DHHS") or his/her designee.

(o) Security Incident. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of personally identifiable information. A Security Incident includes the attempted or successful unauthorized access, use, disclosure, modification, or destruction of or interference with systems operations in an information system which processes Protected Health Information that is under the control of Covered Entity, or Business Associate of Covered Entity, but does not include minor incidents that occur on a daily basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

(p) Security Rule. "Security Rule" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

(q) Subcontractor. "Subcontractor" means a subcontractor of Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of the Business Associate.

(r) Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in Section 164.402, limited to the information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

4. Business Associate's Obligations and Compliance with the HIPAA Privacy and Security Rules.

(a) Business Associate acknowledges that it is directly required to comply with the HIPAA Rules and that Business Associate (including its subcontractors) may be held directly liable and subject to penalties for failure to comply. To the extent the Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164 of the Privacy Rule, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

(b) Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this Agreement, or as required by law.

(c) Business Associate shall not sell Protected Health Information.

5. Permitted Uses and Disclosures.

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes specified in Attachment 1 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 the Privacy Rule if done by Covered Entity. Business Associate must make reasonable efforts to limit Protected Health Information to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

(b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

(e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).

(f) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 of the Privacy Rule if done by Covered Entity, except for the specific uses and disclosures set forth herein.

6. Appropriate Safeguards.

(a) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health 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 Protected Health Information that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to the Minimum Necessary.

(b) Safeguarding Electronic Protected Health Information. Business Associate agrees to comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information. Business Associate must secure all Electronic Protected Health 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 Business Associate fail to comply with this provision, it agrees to hold harmless, defend at its own expense and indemnify Covered Entity in accordance with the terms of Section 9 of the Agreement, "Indemnification".

(c) Destruction of Protected Health Information on paper, film, or other hard copy media must involve either shredding or otherwise destroying the Protected Health Information so that it cannot be read or reconstructed.

(d) Should any employee or subcontractor of Business Associate have direct, authorized access to computer systems of Covered Entity that contain Protected Health Information, Business Associate shall immediately notify Covered Entity 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 Covered Entity to disable the previously authorized access.

7. Reporting Unauthorized Uses and Disclosures.

(a) Business Associate agrees to notify Covered Entity of any access, use or disclosure of Protected Health Information not permitted or provided for by the Agreement of which it becomes aware, including any breach as required at Section 164.410, or security incident. Such notification will be made immediately after discovery by telephone call at 707.253.4715, plus e-mail at Privacy.Officer@countyofnapa.org, and will include, to the extent possible, the

identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the Protected Health 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 Business Associate. Business Associate will also provide to Covered Entity any other available information that the Covered Entity is required to include in its notification to the Individual under Section 164.404(c) at the time of the initial report or promptly thereafter as the information becomes available.

(b) In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe.

(c) A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.

(d) In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity'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 Business Associate is at all times acting as an independent contractor in providing services pursuant to this Agreement and the Master Agreement.

8. Mitigating the Effect of a Breach, Security Incident, or Unauthorized Access, Use or Disclosure of Unsecured Protected Health Information.

(a) Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the breach, security incident, or unauthorized access, use or disclosure of Unsecured Protected Health Information by Business Associate or its employees, officers, subcontractors, agents, or other representatives.

(b) Following a breach, security incident, or any unauthorized access, use or disclosure of Unsecured Protected Health Information, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make this documentation available to Covered Entity.

(c) Except as required by law, Business Associate agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of Unsecured Protected Health Information without obtaining the Covered Entity's prior written consent. Covered Entity 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, Business Associate shall cooperate with and coordinate with Covered Entity to ensure such reporting is in compliance with applicable law and to prevent duplicate reporting, and to determine responsibilities for reporting.

9. Indemnification.

(a) Business Associate agrees to hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 8, above.

(b) Business Associate agrees to assume responsibility for any and all costs associated with the Covered Entity's notification of Individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.

- (c) Business Associate agrees to hold harmless, defend at its own expense and indemnify Covered Entity, including Covered Entity's employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party"), against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.
- (d) Survival. The obligations of Business Associate under this Section 9 shall survive this Agreement.

10. Individuals' Rights.

- (a) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under Section 164.524.
- (b) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity.
- (c) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- (d) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 10(c) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- (e) Business Associate agrees to comply with any restriction to the use or disclosure of Protected Health Information that Covered Entity agrees to in accordance with Section 164.522.

11. Obligations of Covered Entity.

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

12. Agents and Subcontractors of Business Associate.

(a) Business Associate agrees to enter into written agreements with any agent, subcontractor or vendor, to whom it provides Protected Health Information received from Covered Entity or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, that impose the same restrictions, conditions and requirements that apply through this Agreement to Business Associate with respect to such information, including the requirement to immediately notify the Business Associate of any instances of any breach, security incident, intrusion, or unauthorized access to or use or disclosure of Protected Health Information of which it becomes aware. Upon request, Business Associate shall provide copies of such agreements to Covered Entity.

(b) Business Associate 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.

13. Audit, Inspection, and Enforcement.

(a) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.

(b) With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of Protected Health Information to determine compliance with the terms of this Agreement. Business Associate shall promptly correct any violation of this Agreement found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under this Agreement.

14. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

15. Term and Termination.

(a) The terms of this Agreement shall remain in effect for the duration of all services provided by Business Associate under the Master Agreement and for so long as Business Associate remains in possession of any Protected Health Information received from Covered Entity, or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this Section 15 that it is not feasible to return or destroy all Protected Health Information.

(b) Upon termination of the Master Agreement, Business Associate shall recover any Protected Health Information relating to the Master Agreement and this Agreement in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such Protected Health Information, in any form, in its possession and shall retain no copies.

(c) If Business Associate believes it is not feasible to return or destroy the Protected Health Information, Business Associate shall so notify Covered Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the Protected Health Information in its possession, and (2) the specific reasons for such determination. Business Associate may retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and

administration or to carry out its legal responsibilities. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the Protected Health Information, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Master Agreement and this Agreement shall be extended to any Protected Health Information for so long as Business Associate maintains such Protected Health Information, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the Protected Health Information infeasible.

(d) Covered entity may immediately terminate the Master Agreement if it determines that Business Associate has violated a material term of this Agreement.

(e) Survival. The obligations of Business Associate under this Section 15 shall survive this Agreement.

16.Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Rules.

17.Entire Agreement. This Exhibit constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them.

18.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 Covered Entity desires to give to Business Associate shall be addressed to Business Associate at the mailing address set forth in the Master Agreement.

(c) Any mailed notice, demand, request, consent, approval or communication that Business Associate desires to give to Covered Entity shall be addressed to Covered Entity at the following address:

Napa County Compliance and Privacy Officer
2751 Napa Valley Corporate Dr. Suite B
Napa, CA 94559
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.

19.Lost Revenues; Penalties/Fines.

(a) Lost Revenues. Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.

(b) Penalties/Fines for Failure to Comply with HIPAA. Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.

(c) Penalties/Fines (other). Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate'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.

Schedule C:

Acceptance Test Plan

Introduction

The FirstWatch Acceptance Test Plan (ATP) is designed to confirm with you, our Client, that FirstWatch data integration has been completed. It is also the tool by which you will be guided through the verification process of FirstWatch Base System Acceptance. Some features and functions may vary depending on data system and type. Each commonly used functionality of the product is provided an expected result for each "test" executed. These tests assume that the data made available to FirstWatch contains the information necessary to provide the functionality to test. An example would be if the underlying data available to FirstWatch does NOT contain patient destination for an ambulance call, then FirstWatch cannot make it available for the user to view or test.

No.	Test	Expected Result	Pass = Y Fail = N	Comment
1	Navigate to the FirstWatch Subscriber Site subscriber.firstwatch.net	FirstWatch Subscriber Site displays	Yes / No	
2	Enter a Username and Password provided to you by FirstWatch.	Successfully log into Status Page showing a quick-view of one or more triggers	Yes / No	
3	Launch your All Calls Trigger	New window opens showing the Event List summary page	Yes / No	
4	Click a hyperlink field from one of the events in the line listing.	Page displays a drill-down of data related to incident/event selected.	Yes / No	
5	Click the View Alert Config link from the top right of the page.	Separate windows displays criteria for which this trigger will alert, or "This trigger is currently not configured for any alerts."	Yes / No	
6	Set Refresh Rate to 1 minute.	Page will reload every 1 minute. Prior to reloading a green "Reloading" bar will appear near the top left section of the page. Reset Refresh Rate to 20 minutes after page reloads so reloads do not interfere with ATP.	Yes / No	
7	Click the Graphs link from the top of the page	The GraphIt Summary page will display	Yes / No	
8	Check the Hide Min/Max Events box above the Actual Events Graph.	Shaded area (if present) along Actual Events line will disappear.	Yes / No	
9	Check the Hide Hourly Events box above the Actual Events Graph.	Green bars along bottom axis will disappear	Yes / No	
10	Click the Maps link from the top of the page. The Map link is only present for data sets that include geo-data	Click on the filter icon and select a sub-category in the Group By dropdown. Click an incident on the map and click the Incident Detail hyperlink to launch the incident drilldown.	Yes / No	
11	Click the Layers icon and click the Top 10 Problems category	A multi-colored list of the Top 10 Problems will appear	Yes / No	
12	Click the Destination link from the top of the page. (Only present for data sets which include patient transport destination data)	Page displays a line listing of events separated by transport destination.	Yes / No	

13	Click the Analysis Tool link from the top of the page.	Page displays interactive tool for retrospective analysis.	Yes / No	
14	Specify a Start Date/Time and Stop Date/Time of the last 7 to 10 days. (Default date range will include the last 7 days). Click Event List link.	After calculations are complete, trigger will display line listing of all events for date/time range selected.	Yes / No	
15	Click GraphIt link	Graphit summary for date/time range selected will display	Yes / No	
16	Click Maps link	Page displays MapShot of all activity for date/time range selected.	Yes / No	
17	Click the Go-Back to real-time link.	Page returns to Event list view.	Yes / No	
18	Press the Log Out button on the top right corner of this trigger.	User will be logged out and redirected to FirstWatch Subscriber site.		

Acceptance: *Test Plan Passed Successfully, Test Plan Conditionally Accepted or Test Plan Did Not Pass*

If Conditional or Rejected please specify the reason(s) in detail

Name:

Title:

Agency:

Signature:

Date:

When completed, please email this form to admin@firstwatch.net



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1073

TO: Board of Supervisors
FROM: Minh C. Tran, County Executive Officer
REPORT BY: Jennifer Palmer, Director of Housing & Homeless Services
SUBJECT: Rescind & Replace ESG-CV Resolution 2021-43

RECOMMENDATION

Director of Housing and Homeless Services requests adoption of a Resolution rescinding and replacing Resolution No. 2021-43 and consenting to, adopting and ratifying the terms and conditions relating to the 2020 Emergency Solutions Grant-COVID 19 allocation in an amount not to exceed \$1,800,000 which provides funding for housing and homeless services programs.

EXECUTIVE SUMMARY

The State of California Department of Housing and Community Development (HCD) administers the Emergency Solutions Grants (ESG) program with funding received from the U.S. Department of Housing and Urban Development (HUD). A Resolution is required for Napa County to seek funds to support additional services provided to the homeless population during the COVID-19 pandemic. HCD has advised counties to rescind and replace the existing ESG allocation resolution to include potential new allocations of COVID-19 funding.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	N/A
Is it Mandatory or Discretionary?	Discretionary

Discretionary Justification:	Approval of the requested action is discretionary in that there is no mandate to accept the U.S. Department of Housing and Urban Development (HUD) funding to provide additional services to the homeless population as a result of the COVID-19 pandemic.
Is the general fund affected?	No
Future fiscal impact:	This is one time funded that will need to be expended on COVID-19 related activities.
Consequences if not approved:	If this item is not approved, Napa County will be ineligible for additional funding to offset COVID-19 pandemic costs.
County Strategic Plan pillar addressed:	Healthy, Safe, and Welcoming Place to Live, Work, and Visit

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.

BACKGROUND AND DISCUSSION

The State of California Department of Housing and Community Development (HCD) administers the Emergency Solutions Grant (ESG) Program with funding received from the U.S. Department of Housing and Urban Development (HUD). This program provides funding to:

1. Provide a maximum of 10% of the funds for Homeless Management Information System;
2. Engage homeless individuals and families living on the street;
3. Improve the number and quality of emergency shelters for homeless individuals and families;
4. Provide essential services to shelter residents;
5. Rapidly re-house homeless individuals and families; and
6. Prevent families/individuals from becoming homeless.

As part of the Coronavirus Aid, Relief and Economic Security (CARES) Act, Congress appropriated Emergency Solutions Grant funds to assist with costs related to serving the homeless population during the COVID-19 pandemic. Napa County has previously received a total of \$900,000 to support homeless services and utilized these funds to support the additional sheltering costs incurred as a result of the COVID-19 response, including the isolation and quarantine facility at Wine Valley Lodge and the extension and expansion of sheltering services at the site commonly known as the Winter Shelter. HCD has advised Counties that have successfully utilized their full allocations of the potential for a new round of funding allocation.

HCD has advised all counties eligible to receive additional funding allocations to rescind and replace the

existing ESG-CV resolution double the amount of possible allocation.



A Tradition of Stewardship
A Commitment to Service

County Executive Office

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

Main: (707) 253-4421
Fax: (707) 253-4176

Minh C. Tran
County Executive Officer

RESOLUTION NO.

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, RESCINDING AND REPLACING RESOLUTION NO. 2021-43 AND HEREBY CONSENTING TO, ADOPTING, AND RATIFYING THE TERMS AND CONDITIONS RELATING TO ESG FUNDS

WHEREAS, the State of California (“State”), Department of Housing and Community Development (“Department”) issued a second Notice of Funding Availability (“NOFA”) dated October 2, 2020 under the Coronavirus Aid, Relief, and Economic Stimulus (CARES) Act which allocated federal funds for the Emergency Solutions Grants Program (the “Program” or “ESG”) to the State. These funds are referred to herein as the ESG-Coronavirus (ESG-CV) funds and the October 2020 ESG-CV NOFA is distributing “Round 2” of the ESG-CV funding; and

WHEREAS, Napa County (“Applicant”) is an approved state ESG Administrative Entity that previously received ESG-CV funding under the initial ESG-CV NOFA dated June 1, 2020 (hereinafter referred to as “ESG-CV Round 1”) in the amount of \$340,000; and is eligible for additional funding under the second ESG-CV NOFA dated October 2, 2020 (hereinafter referred to as “ESG-CV Round 2”) in the amount of \$500,000; and

WHEREAS, the Department may approve an additional round of funding allocations for the ESG-CV Program, subject to the terms and conditions of the second NOFA, Program regulations and requirements, and the Standard Agreement and other contracts between Department and ESG-CV grant recipients.

NOW THEREFORE BE IT RESOLVED THAT:

1. All information submitted by Applicant on its ESG-CV Round 1 and Round 2 applications remain true, correct, and accurate, or the Department approved in writing a change to Applicant’s ESG-CV Round 1 and ESG-CV Round 2 applications. Applicant affirms its continued compliance to all of the terms and conditions of ESG-CV Round 1 application and related Standard Agreement.
2. Applicant is authorized to amend the existing application for ESG-CV Round 2 to increase the amount of funding available to the Applicant and be subject to the terms thereof.
3. If Applicant receives an additional grant of ESG-CV Round 2 funds from the Department pursuant to the above referenced ESG-CV (Round 2) NOFA, it represents and certifies that it will use all such funds in a manner consistent and in compliance with all applicable state and federal statutes, rules, regulations, and laws, including without limitation all rules and laws

regarding the ESG-CV Program, as well as any and all contracts Applicant may have with the Department.

4. In addition to its ESG-CV Round 1 grant for \$340,000, and ESG-CV Round 2 grant for \$500,000, Applicant is now hereby authorized and directed to receive an additional ESG-CV Round 2 grant, in an amount not to exceed \$900,000 in accordance with all applicable rules and laws.
5. Applicant hereby agrees to use the ESG-CV funds for eligible activities as approved by the Department and in accordance with all Program requirements, and other rules and laws, as well as in a manner consistent and in compliance with the ESG-CV Standard Agreement, including any amendments incorporating new terms and conditions to such Standard Agreement, and other contracts between the Applicant and the Department.
6. The County Executive Officer, or designee, is authorized to execute the ESG-CV Standard Agreement Amendment and any subsequent amendments or modifications thereto, as well as any other documents which are related to the Program or the ESG-CV grant awarded to Applicant, as the Department may deem appropriate.
7. This Resolution shall replace Resolution 2021-43, which is hereby rescinded.

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 19th day of October 2021 by the following vote:

AYES: SUPERVISORS

NOES: SUPERVISORS

ABSTAIN: SUPERVISORS

ABSENT: SUPERVISORS

NAPA COUNTY, a political subdivision of the State of California

By: _____
ALFREDO PEDROZA, Chair of the
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <i>S. Darbinian</i> Date: October 13, 2021	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: _____
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Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1052

TO: Board of Supervisors
FROM: Christine Briceno - Director of Human Resources
REPORT BY: Kevin Lemieux - Senior Human Resources Analyst
SUBJECT: Adoption of a Resolution Amending the Table and Index of Classes

RECOMMENDATION

Director of Human Resources requests adoption of a Resolution amending the Table and Index of Classes to increase the salary for the employees covered by the Deputy Sheriff Association, as outlined in "Exhibit A," effective October 16, 2021, with no net increase in full-time equivalents (FTE), and a slight impact to the County General Fund.

EXECUTIVE SUMMARY

Human Resources conducted an Equity Study of benchmark classifications in comparable agencies in accordance with section 7.5 (b) of the current Memorandum of Understanding (MOU) between Napa County and Deputy Sheriff Association (DSA). It was determined that both benchmarks were below market median. Therefore, the requested action adjusts classifications within each series, as well as all other classifications with salaries tied to the benchmarks as required by the terms of the MOU agreement.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The County and the Deputy Sheriff's Association (DSA) bargained in good faith, and reached the agreements within the authority granted by the Board.
Is the general fund affected?	Yes

Future fiscal impact:	The increased cost of salaries and benefits for Fiscal Year 2021-2022 is estimated at \$248,600. This amount was not included in the Fiscal Year 2021-2022 budget previously approved by the Board. As is the County's general practice, the Sheriff's Office and District Attorney's Office will absorb the salary adjustment within their approved budgets through salary or other savings. If a department is unable to fully cover this adjustment within their existing budget, adjustments will be made as necessary at mid-year through transfer from Appropriation for Contingencies.
Consequences if not approved:	If these changes are not approved, the County would not be acting in a manner consistent with the terms of the Board approved DSA contract.
County Strategic Plan pillar addressed:	Effective and Open Government

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.

BACKGROUND AND DISCUSSION

In accordance with section 7.5 (b) of the current Memorandum of Understanding between Napa County and Deputy Sheriff Association (DSA), in September 2021, Human Resources conducted an equity study of benchmark classes in comparison agencies (City of Napa, Solano County, Contra Costa County, Marin County, Santa Cruz County and Sonoma County). Section 7.5 (b) of the MOU also states the increase must take effect in October 2021.

Based on the results of the study, Human Resources recommends a 2.77% increase to the following classifications: Deputy Sheriff Trainee, Deputy Sheriff I, Deputy Sheriff II, Deputy Sheriff III, Senior Deputy Sheriff II, and Senior Deputy Sheriff III. Human Resources also recommends a 1.61% increase to the following classifications: District Attorney Investigator, Senior District Attorney Investigator, Supervising District Attorney Investigator, Sergeant, and Senior Sergeant.

Therefore, the Director of Human Resources requests adoption of a Resolution amending the Table and Index of Classes, as outlined in "Exhibit A," effective October 16, 2021, with no net increase in full-time equivalents (FTE), and a slight impact to the County General Fund.

SUPPORTING DOCUMENTS

Resolution

CEO Recommendation: Approve

RESOLUTION NO. 2021-

**RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS,
STATE OF CALIFORNIA, AMENDING THE TABLE AND INDEX OF CLASSES,
EFFECTIVE OCTOBER 16, 2021**

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, in September 2021, Human Resources conducted an equity study of benchmark classes in comparison agencies and recommends increases to certain classifications in accordance with section 7.5 (b) of the current Memorandum of Understanding between Napa County and Deputy Sheriff Association; and

WHEREAS, the Director of Human Resources recommends that the proposed changes to the Table and Index of Classes, 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, as set forth in Exhibit “A,” effective October 16, 2021.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

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 19th day of October 2021, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of
 the State of California

By: _____
 ALFREDO PEDROZA, Chair of the
 Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <i>Susan B. Altman, Deputy</i></p> <p>Date October 7, 2021</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors</p> <p>By: _____</p>
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EXHIBIT A

Director of Human Resources requests approval of the following changes to the Table and Index of Classes, effective October 16, 2021:

1. Delete: Deputy Sheriff Trainee
\$3,206.40 - \$3,206.40 (biweekly)
\$6,947.00 - \$6,947.00 (approximate monthly salary)
2. Delete: Deputy Sheriff I
\$3,364.80 - \$4,056.80 (biweekly)
\$7,290.00 - \$8,790.00 (approximate monthly salary)
3. Delete: Deputy Sheriff II
\$3,713.60 - \$4,460.00 (biweekly)
\$8,046.00 - \$9,663.00 (approximate monthly salary)
4. Delete: Deputy Sheriff III
\$3,892.80 - \$4,672.80 (biweekly)
\$8,434.00 - \$10,124.00 (approximate monthly salary)
5. Delete: Senior Deputy Sheriff II
\$4,565.60 - \$4,672.80 (biweekly)
\$9,892.00 - \$10,124.00 (approximate monthly salary)
6. Delete: Senior Deputy Sheriff III
\$4,780.80 - \$4,902.40 (biweekly)
\$10,358.00 - \$10,622.00 (approximate monthly salary)
7. Delete: District Attorney Investigator
\$4,396.80 - \$5,311.20 (biweekly)
\$9,526.00 - \$11,508.00 (approximate monthly salary)
8. Delete: Senior District Attorney Investigator
\$4,504.00 - \$ 5,430.40 (biweekly)
\$9,759.00 - \$11,766.00 (approximate monthly salary)
9. Delete: Supervising District Attorney Investigator
\$4,857.60 - \$5,859.20 (biweekly)
\$10,525.00 - \$12,695.00 (approximate monthly salary)
10. Delete: Sergeant
\$4,396.80 - \$5,311.20 (biweekly)
\$9,526.00 - \$11,508.00 (approximate monthly salary)

11. Delete: Senior Sergeant
\$4,462.40 - \$5,390.40 (biweekly)
\$9,669.00 - \$11,679.00 (approximate monthly salary)
12. Add: Deputy Sheriff Trainee
\$3,295.20 - \$3,295.20 (biweekly)
\$7,140.00 - \$7,140.00 (approximate monthly salary)
13. Add: Deputy Sheriff I
\$3,458.40 - \$4,168.80 (biweekly)
\$7,493.00 - \$9,032.00 (approximate monthly salary)
14. Add: Deputy Sheriff II
\$3,816.80 - \$4,583.20 (biweekly)
\$8,270.00 - \$9,930.00 (approximate monthly salary)
15. Add: Deputy Sheriff III
\$4,000.80 - \$ 4,802.40 (biweekly)
\$8,668.00 - \$10,405.00 (approximate monthly salary)
16. Add: Senior Deputy Sheriff II
\$ 4,692.00 - \$4,802.40 (biweekly)
\$10,166.00 - \$10,405.00 (approximate monthly salary)
17. Add: Senior Deputy Sheriff III
\$4,913.60 - \$ 5,038.40 (biweekly)
\$ 10,646.00 - \$10,917.00 (approximate monthly salary)
18. Add: District Attorney Investigator
\$4,467.20 - \$5,396.80 (biweekly)
\$9,679.00 - \$11,693.00 (approximate monthly salary)
19. Add: Senior District Attorney Investigator
\$4,576.80 - \$5,517.60 (biweekly)
\$9,916.00 - \$11,955.00 (approximate monthly salary)
20. Add: Supervising District Attorney Investigator
\$4,936.00 - \$5,953.60 (biweekly)
\$10,695.00 - \$12,899.00 (approximate monthly salary)
21. Add: Sergeant
\$4,467.20 - \$5,396.90 (biweekly)
\$9,679.00 - \$11,693.00 (approximate monthly salary)
22. Add: Senior Sergeant
\$4,534.40 - \$5,476.80 (biweekly)
\$9,825.00 - \$11,866.00 (approximate monthly salary)



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1056

TO: Board of Supervisors
FROM: Christine Briceno - Director of Human Resources
REPORT BY: Kevin Lemieux - Senior Human Resources Analyst
SUBJECT: Adoption of a Resolution Amending the Departmental Allocation List for Multiple Divisions of the Health and Human Services Agency

RECOMMENDATION

Director of Human Resources and Director of Health and Human Services Agency request adoption of a Resolution amending the Departmental Allocation List to improve services for multiple divisions of the Health and Human Services Agency, as outlined in "Exhibit A," effective October 19, 2021, with a net increase of nine (9) full-time equivalents (FTE), and no impact to the County General Fund.

EXECUTIVE SUMMARY

Human Resources and the Health and Human Services Agency (HHSA) reviewed immediate departmental needs related to the COVID-19 pandemic response, and other changing business requirements. If approved, these actions will allow HHSA to use a variety of existing funding sources to implement the proper staffing composition to meet community needs.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The requested actions are necessary to properly equip the Health and Human Services Agency (HHSA) with the skillsets they need across all divisions during an ongoing pandemic, and during a time with growing community needs.
Is the general fund affected?	No

Future fiscal impact:	The increased cost of salaries and benefits for Fiscal Year 2021-2022 is fully offset by existing funding through the HHSA Fund, grant funding sources, and salary savings. The increased cost of salaries and benefits for future fiscal years will be budgeted accordingly.
Consequences if not approved:	If these changes are not approved, HHSA will not have the proper staffing mix to meet new and rapidly changing State and Federal requirements related to COVID-19 and will be understaffed in other key areas without the proper classifications to perform the work.
County Strategic Plan pillar addressed:	Effective and Open Government

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.

BACKGROUND AND DISCUSSION

The requested actions by the Health and Human Services Agency are summarized below.

Public Health Division - The Public Health Division is requesting four (4) new limited term positions with expiration dates in May/June of 2023. All four (4) positions are critical to supporting the COVID-19 response, and includes three (3) Epidemiologists and one (1) Staff Services Analyst I/II, who will fill behind redirected State staff.

Mental Health Division - The Mental Health Division is requesting two (2) Senior Mental Health Workers to perform Mental Health outreach activities at some of the Napa County Library branches.

Alcohol and Drug Services Division - The Alcohol and Drug Services Division is seeking to add one Health Education Specialist to monitor subcontractors, review data collection procedures, and participate in prevention activities.

Child Welfare Services Division - The Child Welfare Services Division is requesting to delete a vacant Social Worker II position and add a Social Worker III in its place. HHSA and Human Resources determined that the knowledge, skills and abilities of a Social Worker III better align with the requirements of the Division's Visitation Coordinator Position.

Comprehensive Services for Older Adults Division - The Comprehensive Services for Older Adults Division is requesting a new Social Worker IV position to meet a growing demand for services. Over each of the past four

years, the number of Adult Protect Services referrals has increased, which calls for the addition of an allocation.

Self-Sufficiency Services Division - The Self-Sufficiency Services Division is seeking to replace a vacant Eligibility Worker III position with a new Eligibility Supervisor position to provide a more efficient reporting structure within the Division.

Administration Division - The Administration Division is requesting deletion of a vacant Accounting Assistant position, and the addition of two (2) new Staff Services Analyst I/II positions. One of the Staff Services Analyst I/II's will be assigned contract and grant monitoring, as well as contract procurement activities. The second Staff Services Analyst I/II is requested to address the increasing workload associated with Drug Medi-Cal billing, billing compliance, and the accurate capture of pay sources and revenue collection.

Therefore, the Director of Human Resources and the Director of Health and Human Services Agency request adoption of a Resolution amending the Departmental Allocation List for multiple divisions, as outlined in "Exhibit A," effective October 19, 2021, with a net increase of nine (9) full-time equivalents (FTE), and no impact to the County General Fund.

SUPPORTING DOCUMENTS

Resolution

RESOLUTION NO. 2021-__

**RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS,
STATE OF CALIFORNIA, AMENDING THE DEPARTMENTAL ALLOCATION LIST
FOR MULTIPLE DIVISIONS OF THE HEALTH AND HUMAN SERVICES AGENCY,
EFFECTIVE OCTOBER 19, 2021**

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 2.100.280 of the Napa County Code provides that the number of positions and classifications in the Departmental Allocation Lists 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 Departmental Allocation List for multiple divisions of the Health and Human Services Agency, 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 Departmental Allocation List for multiple divisions of the Health and Human Services Agency, as set forth in Exhibit “A,” effective October 19, 2021.

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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 19th day of October 2021, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of
 the State of California

By: _____
 ALFREDO PEDROZA, Chair of the
 Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <i>Susan B. Altman, Deputy</i></p> <p>Date: October 7, 2021</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date:</p> <p>Processed By:</p> <p>_____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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EXHIBIT A

Director of Human Resources requests approval to amend the Departmental Allocation List for the multiple divisions of the Health and Human Services Agency, as follows, effective October 19, 2021:

HHSA – PUBLIC HEALTH DIVISION: BUDGET UNIT #20001-00

1. Add: Three 1.0 FTE Epidemiologist – Limited Term*
2. Add: One 1.0 FTE Staff Services Analyst I/II – Limited Term**

HHSA – MENTAL HEALTH DIVISION: BUDGET UNIT #20002-00

3. Add: Two 1.0 FTE Senior Mental Health Worker

HHSA – ALCOHOL AND DRUG SERVICES DIVISION: BUDGET UNIT #20003-00

4. Add: One 1.0 FTE Health Education Specialist

HHSA – CHILD WELFARE SERVICES DIVISION: BUDGET UNIT #20004-00

5. Delete: One 1.0 FTE Social Worker II
6. Add: One 1.0 FTE Social Worker III

HHSA – CSOA DIVISION: BUDGET UNIT #20005-00

7. Add: One 1.0 FTE Social Worker IV

HHSA – SELF-SUFFICIENCY SERVICES DIVISION: BUDGET UNIT #20006-00

8. Delete: One 1.0 FTE Eligibility Specialist III
9. Add: One 1.0 FTE Eligibility Supervisor

HHSA – ADMINISTRATION DIVISION: BUDGET UNIT #20010-00

10. Delete: One 1.0 FTE Accounting Assistant
11. Add: Two 1.0 FTE Staff Services Analyst I/II

*Limited Term through June 30, 2023.

**Limited Term through May 31, 2023.



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1057

TO: Board of Supervisors
FROM: Christine Briceño - Director of Human Resources
REPORT BY: Kevin Lemieux - Senior Human Resources Analyst
SUBJECT: Resolution Amending the Departmental Allocation List for the Human Resources Division of the County Executive Office

RECOMMENDATION

Director of Human Resources request adoption of a Resolution amending the Departmental Allocation List for the Human Resources Division of the County Executive Office, by adding one 1.0 FTE Human Resources Assistant - Limited Term, effective October 19, 2021 through June 30, 2023, with a net increase of one full-time equivalent, and a no impact to the General Fund to provide administrative support to the rollout of the new Enterprise Resource Planning software.

EXECUTIVE SUMMARY

If approved, the requested action adds a Human Resources Assistant - Limited Term to the Human Resources Division of the County Executive Office to provide administrative support to the rollout of the County's new Enterprise Resource Planning software.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The requested action will allow Human Resources to add administrative support to the essential rollout of a new Enterprise Resource Planning (ERP) tool to all County employees.
Is the general fund affected?	No
Future fiscal impact:	The increased cost of salary and benefits for the remainder of Fiscal Year 2021-2022 and for Fiscal Year 2022-23 for the proposed action is estimated at \$90,765 and \$120,020 respectively. All costs associated with the implantation and rollout of this software will be funded by existing Financials and Human Resources ERP Project Budget.

Consequences if not approved:

If the requested action is not approved, Human Resources will not have adequate staffing to plan and execute critical ERP Project training activities and administrative support during the rollout.

County Strategic Plan pillar addressed:

Effective and Open Government

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.

BACKGROUND AND DISCUSSION

In March of 2020, the County entered in to an agreement with Tyler Technologies to replace the County's antiquated Enterprise Resource Planning (ERP) tool. Since then, the County has implemented phase one of the project consisting of the Financial modules, which went live July 1, 2021. The second phase is the Human Capital Management and Payroll modules, scheduled for go-live in mid to late 2022. The Financials and Humans Resource ERP Project budget, also approved in March of 2020, included funding for additional temporary staffing for support during the implementation and rollout. There are ample funds remaining for this position and will be utilized to reimburse all costs associated with project related tasks.

If approved, this action will add a Human Resources Assistant - Limited Term to the Human Resources Division within the County Executive Office. With Human Capital Management and Payroll planned go-live in mid to late 2022, ERP Project Leadership have identified a need within the Human Resources Division for additional staff support. The position would have a variety of responsibilities related to the ERP Project, including basic project management, administrative support to Project Management, organization and planning support for rollout activities, and communicating with County employees throughout the Project implementation. The requested position's term would expire on June 30, 2023.

Therefore, the Director of Human Resources request the adoption of a Resolution amending the Departmental Allocation List for the Human Resources Division of the County Executive Office, as shown in "Exhibit A," effective October 19, 2021, with a net increase of one full-time equivalent, and no increase to the General Fund.

SUPPORTING DOCUMENTS

Resolution

RESOLUTION NO. 2021-

RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, AMENDING THE DEPARTMENTAL ALLOCATION LIST FOR THE HUMAN RESOURCES DIVISION OF THE COUNTY EXECUTIVE OFFICE, EFFECTIVE OCTOBER 19, 2021

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 2.100.280 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 Departmental Allocation List for the Human Resources Division of 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 Departmental Allocation List for the Human Resources Division of the County Executive Office, as set forth in Exhibit “A,” effective October 19, 2021.

[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 19th day of October 2021, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of
 the State of California

By: _____
 ALFREDO PEDROZA, Chair of the
 Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <i>Susan B. Altman, Deputy</i></p> <p>Date: October 7, 2021</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date:</p> <p>Processed By:</p> <p>_____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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EXHIBIT A

Director of Human Resources requests approval to amend the Departmental Allocation List for the Human Resources Division of the County Executive Office, effective October 19, 2021:

HUMAN RESOURCES DIVISION OF THE COUNTY EXECUTIVE OFFICE #10220-00

Add: One 1.0 FTE Human Resources Assistant – Limited Term*

*Limited Term through June 30, 2023



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-916

TO: Board of Supervisors

FROM: Jon Gjestvang - Chief Financial Officer - Information Technology Services

REPORT BY: Elena Guzman - Staff Services Analyst

SUBJECT: Sole Source Award to AMS.NET for Cisco Core Switch, Hardware, Labor and Software

RECOMMENDATION

Chief Information Officer requests the following actions:

1. A waiver of competitive bidding requirement and sole source award to AMS.NET (pursuant to Napa County Code Section 2.36.090) for the purchase of (4) Cisco core switches, software, and labor; and
2. Approval and authorization for the Chair to sign an agreement with AMS.NET, for a maximum of \$163,886 for the term of October 20, 2021 through June 30, 2022 for the purchase of (4) Cisco core switches, software and labor.

EXECUTIVE SUMMARY

AMS.NET is the authorized Cisco vendor for the North Bay region and is Napa County's source of hardware and licensing purchases for all Cisco related products, including Cisco core switches. The core switches are the main switching infrastructure for the network, which are located in the County's main data center. The Cisco core switches function as the main hub for the network and direct data traffic to department sites, Internet, data servers and firewalls.

Approval of today's requested action will allow for a waiver of competitive bidding requirement and sole source award to AMS.NET for the purchase of (4) Cisco core switches, software, and labor. Since the Cisco core switch units exceed \$10,000 for a single unit, board approval is required. Cisco core switches are included in the FY21-22 Schedule of Capital Assets.

AMS is not a local vendor.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Information Technology Services (ITS)
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	No
Future fiscal impact:	There is no fiscal impact beyond the current fiscal year.
Consequences if not approved:	If not approved, ITS Network Operations will be unable to replace the current core switches that are end of life and no longer viable or supported. The core switches are critical components of Napa County's main data center. Replacement is imperative as the data will not flow and use of the network will cease in their absence.
County Strategic Plan pillar addressed:	Effective and Open Government

ENVIRONMENTAL IMPACT

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

BACKGROUND AND DISCUSSION

AMS.NET, Inc. (AMS.NET) is the vendor the County uses for its telephony software licenses, annual technical support, and Cisco Voice Over Internet Protocol (VoIP) telephone system.

In addition to procuring software licenses through AMS.NET, the County has previously entered into a number of professional services agreements with AMS.NET over the past 4 years. On August 15, 2017, the Board of Supervisors approved Agreement 180085B for a total of \$74,460 with AMS.NET for custom configuration, purchase of equipment, installation, and training services needed to upgrade the County's VoIP telephone system. The Network Operations and Telephony subdivisions of ITS worked with AMS.NET to complete the VoIP system upgrade. This agreement expired on June 30, 2018.

On October 1, 2017, the Board of Supervisors approved Agreement 180141B for a total of \$35,000 with AMS.NET in order to provide the County with professional technical support and maintenance for the VoIP system and core network infrastructure. Due to the highly technical nature of the VoIP system, the Telephony staff occasionally needed assistance from AMS.NET with troubleshooting, repairs, and reconfigurations.

On September 25, 2018, the Board of Supervisors approved Agreement 190127B for a total of \$13,800 with AMS.NET for security camera integration services related to the Sheriff's Facility Security Camera Project, PW17-17. This project allowed for the integration of the security camera equipment's management software into the County's system, the migration of existing Milestone Enterprise servers, the building of a new server, and the addition of existing Enterprise cameras to the new server. This agreement expired on June 30, 2019.

On April 21, 2020, the Board of Supervisors approved Amendment No. 1 to Agreement 180141B with AMS.NET for annual technical support hours, planned project, and software licenses related to the County's

Cisco Voice Over Internet Protocol (VoIP), the expansion of the Health and Human Services Administration's operations call center, and the upgrade of ITS Network Operations' Border Gateway Protocol (BGP). This agreement expires on June 30, 2022.

On June 23, 2020, the Board of Supervisors approved a sole source award to AMS.NET for the purchase of software licenses for the Cisco Flex Plan Subscription and the Cisco Flex Contract Center Subscriptions. AMS.NET is a Cisco authorized vendor of the Cisco software licenses. The Cisco Flex Plan Subscription are the licenses the County uses for its telephone system, including phones, voicemail, and active directory. Cisco Flex Contract Center Subscription licenses allow County employees to manage incoming calls for service, including placing holds, transfers, and the tracking of both call and wait times.

On March 16, 2021 the Board of Supervisors approved a sole source award to AMS.NET for the purchase of equipment, labor, and licensing for the wireless internet services project at 650 Imperial Way, for a maximum of \$22,984. The software subscriptions are for the term of March 9, 2021 to June 30, 2024.

Approval of today's requested action will allow for a waiver of competitive bidding requirement and sole source award of up to a maximum of \$163,886 to AMS.NET for the purchase of (4) Cisco core switch units, software, and labor. The current core switches are at end of life and no longer supported. With very few exceptions, data traveling across the network traverse the core switches, and therefore, it is imperative they are replaced since they are critical components of the County's main data center.

AMS.NET, Inc., is located in Livermore, CA, and is not a local vendor. AMS.NET implemented the County's VoIP system using the company's extensive knowledge of the County's network infrastructure. Additionally, they are an authorized vendor of Cisco software systems, giving them detailed understanding of the software licenses and hardware.

NAPA COUNTY AGREEMENT NO. 220156B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2021, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY”, and AMS.NET, INC., a Delaware corporation, whose business address is 502 Commerce Way, Livermore, CA 94551, hereinafter referred to as “CONTRACTOR”;

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide Cisco Core switching hardware and initial configuration technical support; 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 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, 2022, 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).
2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit “A”, attached hereto and 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. 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 TWENTY FIVE THOUSAND EIGHT

HUNDRED AND EIGHTY DOLLARS (\$25,880) for professional services and ONE HUNDRED THIRTY EIGHT THOUSAND AND SIX DOLLARS (\$138,006) for the purchase of hardware and software expenses; 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 thirty (30) days to the Chief Information 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 Chief Information 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. **[RESERVED]**

(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 Information Technology Services 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 (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 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

Jon Gjestvang
Napa County ITS
650 Imperial Way, Ste. 201
Napa, CA 94559
707-253-4089
jon.gjestvang@countyofnapa.org

CONTRACTOR

David Zieker
AMS.NET, Inc.
502 Commerce Way
Livermore, CA 94551
925-245-6160
dzieker@ams.net

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 Information 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 of 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 Information 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]

[Remainder of page intentionally left blank; signature page as follows.]

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

AMS.NET, INC.

By _____
ROBERT TOCCI, President

By _____
JOSEPH MOOMAU, Secretary

“CONTRACTOR”

NAPA COUNTY, a political subdivision of
the State of California

By _____
ALFREDO PEDROZA, Chair
Board of Supervisors

“COUNTY”

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>John L. Myers (e-sign)</u> County Counsel</p> <p>Date: <u>September 28, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

[Quote #Q-00049976]

Line	Item Description	Manufacturer	Qty	Unit Price	Extended Price
Cisco Catalyst 9500 32-port 40/100G Advantage Switch					
1	C9500-32QC-A Catalyst 9500 32-port 40/100G only, Advantage	Cisco Systems Inc.	2.00	\$15,002.33	\$30,004.66
2	CON-SNT-C9532ACQ SNTC-8X5XNBD Catalyst 9500 32-port 40/100G only, Adva 60 Month Terms	Cisco Systems Inc.	2.00	\$8,612.00	\$17,224.00
3	C9500-NW-A C9500 Network Stack, Advantage	Cisco Systems Inc.	2.00	\$0.00	\$0.00
4	SC9500HUK9-173 Cisco Catalyst 9500H XE.17.3 UNIVERSAL	Cisco Systems Inc.	2.00	\$0.00	\$0.00
5	C9K-PWR-650WAC-R 650W AC Config 4 Power Supply front to back cooling	Cisco Systems Inc.	2.00	\$0.00	\$0.00
6	C9K-PWR-650WAC-R/2 650W AC Config 4 Power Supply front to back cooling	Cisco Systems Inc.	2.00	\$1,222.26	\$2,444.52
7	CAB-9K12A-NA Power Cord, 125VAC 13A NEMA 5-15 Plug, North America	Cisco Systems Inc.	4.00	\$0.00	\$0.00
8	C9K-F1-SSD-BLANK Cisco pluggable SSD storage	Cisco Systems Inc.	2.00	\$0.00	\$0.00

9	C9K-T1-FANTRAY Catalyst 9500 Type 4 front to back cooling Fan	Cisco Systems Inc.	4.00	\$0.00	\$0.00
10	C9500-DNA-32QC-A C9500 DNA Advantage, Term License	Cisco Systems Inc.	2.00	\$0.00	\$0.00
11	C9500-DNA-A-5Y DNA Advantage 5 Year License	Cisco Systems Inc.	2.00	\$10,120.30	\$20,240.60
12	PI-LFAS-T Prime Infrastructure Lifecycle & Assurance Term - Smart Lic	Cisco Systems Inc.	6.00	\$0.00	\$0.00
13	PI-LFAS-AP-T-5Y PI Dev Lic for Lifecycle & Assurance Term 5Y	Cisco Systems Inc.	6.00	\$0.00	\$0.00
14	NETWORK-PNP-LIC Network Plug-n-Play License for zero-touch device deployment	Cisco Systems Inc.	2.00	\$0.00	\$0.00

Cisco Catalyst 9500 24x1/10/25G and 4-port 40/100G, Advantage Switch

15	C9500-24Y4C-A Catalyst 9500 24x1/10/25G and 4-port 40/100G, Advantage	Cisco Systems Inc.	2.00	\$10,837.80	\$21,675.60
16	CON-SNT-C95024YA SNTC-8X5XNBD Catalyst 9500 24-port 25/100G only, Adv 60 Month Terms	Cisco Systems Inc.	2.00	\$6,220.00	\$12,440.00
17	C9500-NW-A C9500 Network Stack, Advantage	Cisco Systems Inc.	2.00	\$0.00	\$0.00
18	SC9500HUK9-173 Cisco Catalyst 9500H XE.17.3 UNIVERSAL	Cisco Systems Inc.	2.00	\$0.00	\$0.00
19	C9K-PWR-650WAC-R 650W AC Config 4 Power Supply front to back cooling	Cisco Systems Inc.	2.00	\$0.00	\$0.00
20	C9K-PWR-650WAC-R/2 650W AC Config 4 Power Supply front to back cooling	Cisco Systems Inc.	2.00	\$1,222.26	\$2,444.52
21	CAB-9K12A-NA Power Cord, 125VAC 13A NEMA 5-15 Plug, North America	Cisco Systems Inc.	4.00	\$0.00	\$0.00
22	C9K-F1-SSD-BLANK Cisco pluggable SSD storage	Cisco Systems Inc.	2.00	\$0.00	\$0.00
23	C9K-T1-FANTRAY Catalyst 9500 Type 4 front to back cooling Fan	Cisco Systems Inc.	4.00	\$0.00	\$0.00
24	C9500-DNA-24Y4C-A C9500 DNA Advantage, Term License	Cisco Systems Inc.	2.00	\$0.00	\$0.00

25	C9500-DNA-L-A-5Y DNA Advantage 5 Year License	Cisco Systems Inc.	2.00	\$5,935.71	\$11,871.42
26	PI-LFAS-T Prime Infrastructure Lifecycle & Assurance Term - Smart Lic	Cisco Systems Inc.	6.00	\$0.00	\$0.00
27	PI-LFAS-AP-T-5Y PI Dev Lic for Lifecycle & Assurance Term 5Y	Cisco Systems Inc.	6.00	\$0.00	\$0.00
28	NETWORK-PNP-LIC Network Plug-n-Play License for zero-touch device deployment	Cisco Systems Inc.	2.00	\$0.00	\$0.00

Cisco 100GBASE-CR4 Passive Copper Cable, 3m

29	QSFP-100G-CU3M= 100GBASE-CR4 Passive Copper Cable, 3m	Cisco Systems Inc.	14.00	\$217.00	\$3,038.00
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Cisco QSFP to SFP10G adapter

30	CVR-QSFP-SFP10G= QSFP to SFP10G adapter	Cisco Systems Inc.	20.00	\$220.13	\$4,402.60
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Cisco 1000BASE-T SFP Transceiver Module

31	GLC-TE= 1000BASE-T SFP transceiver module for Category 5 copper wire	Cisco Systems Inc.	12.00	\$259.92	\$3,119.04
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Cisco 1000BASE-SX SFP Transceiver Module

32	GLC-SX-MMD= 1000BASE-SX SFP transceiver module, MMF, 850nm, DOM	Cisco Systems Inc.	12.00	\$301.46	\$3,617.52
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Labor

33	AMS-MS-FLEX-PRE-20 \$4,600 Block of Premium Flex Support Hours - 20 Hours	AMS.NET	5.00	\$4,600.00	\$23,000.00
34	AMS-NI-PM-FOC Labor: Project Manager	AMS.NET	16.00	\$180.00	\$2,880.00

Shipping

35	AMS-FREIGHT Freight and Handling	None	1.00	\$0.00	\$0.00
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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

DESCRIPTION	PER ATTACHED AMS.NET QUOTE #	PROFESSIONAL SERVICE SUB- TOTAL	SOFTWARE LICENSES/ SUBSCRIPTIONS SUB-TOTAL	TOTALS
Cisco Core Switch Replacement Rev 01	#Q-00049976	\$25,880.00	\$138,005.36	\$163,885.36
	TOTALS	\$25,880.00	\$138,005.36	\$163,885.36

The maximum payments not to exceed ONE HUNDRED SIXTY THREE THOUSAND EIGHT HUNDRED AND EIGHTY SIX DOLLARS (\$163,886.00).

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	Site visit/investigation 123 Main St, Napa. Conf w/Owner AutoCad, Bldg X, 3 rd Floor	Smith, Engineer	1.5	\$165.00	247.50
1/1/15		Smith, Engineer	1	\$165.00	165.00
1/1/15		Smith, Engineer	4	\$165.00	660.00
		Smith, Engineer			
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	\$195.00	341.25
1/2/15	AutoCad Bldg X, 3 rd Floor Conf w/Owner re 2 nd Floor	Smith, Engineer	4	\$165.00	660.00
1/2/15		Smith, Engineer	.5	\$165.00	82.50
1/3/15	Mtg w/Jones re 2 nd Floor; conf w/Owner Mtg w/Smith; conf w/Owner re 2 nd Floor	Smith, Engineer	1.5	\$165.00	247.50
1/3/15		Jones, PE	1.5	\$195.00	292.50
TOTAL					



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-982

TO: Board of Supervisors
FROM: Anthony Halstead - Director Library
REPORT BY: Michelle Carreon - Staff Services Analyst
SUBJECT: Amendment No. 1 to Agreement 190295B with Unique Management Services, Inc.

RECOMMENDATION

Director of Library Services and Community Outreach requests approval of and authorization for the Chair to sign Amendment No. 1 to Agreement No. 190295B with Unique Management Services, Inc. extending the term through June 30, 2026, increasing contract maximum by \$20,000 with a new maximum of \$50,000, and updating the scope of work to include pre-collection services.

EXECUTIVE SUMMARY

On May 7, 2019, the Board of Supervisors authorized Agreement No. 190295B with Unique Management Services, Inc. to collect unpaid fines, fees and lost material costs owed to County as ordered or assessed by the Napa County Library.

Approval of Amendment No. 1 to Agreement No. 190295B will extend the term of the agreement through June 30, 2026, increase maximum compensation to \$50,000, amend the scope of work to include pre-collection and additional services as requested by the Director of Library Services.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	The Library's General Operations budget: Fund 2020, Subdivision 2020000 expense account 52110.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	To provide patrons with a mailed pre-collection notice before sending collection notices.
Is the general fund affected?	No

Future fiscal impact:	This agreement is renewed annually and will be budgeted accordingly in future fiscal years.
Consequences if not approved:	Napa County Library patrons will not receive a mailed courtesy pre-collection notice for overdue materials before receiving a collection notice.
County Strategic Plan pillar addressed:	Collaborative and Engaged 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.

BACKGROUND AND DISCUSSION

On May 7, 2019, the Board of Supervisors authorized Agreement No. 190295B with Unique Management Services, Inc. (UMS) for the term through June 30, 2024 and a contract maximum of \$30,000. If approved, Amendment No. 1 to Agreement No. 190295B, will extend the term through June 30, 2026 adding an additional \$20,000 to the contract maximum for a pre-collection notification service and additional services as requested by the Director of Library Services.

Unique Management Solutions (UMS) provide support in recovering unreturned library materials. Their services resulted in a significantly improved recovery rate from our previous process, which was handled in house and in the form of a letter sent by the library and a follow up sent by County's Central Collections staff.

UMS is the only collection agency which specializes in Library collections and can integrate with our integrated library system, Polaris. Because UMS works solely with libraries, it does not approach collections in the traditional way. The company's goal is to increase the return of materials or the payment of fees, not to alienate the patrons.

UMS will send a pre-collection notice before formal collection notice. The pre-collection notices are designed to be friendly with the goal of patrons returning to the library with no effect to the library's goodwill or \$10 collection services fee. The pre-collection process focuses on the recovery of overdue materials; not just a balance to get materials back to the library.

Unique Management Services, Inc. of Jeffersonville, IN is not a local vendor.

AMENDMENT NO 1.

TO NAPA COUNTY AGREEMENT No. 190295B

THIS FIRST AMENDMENT to Napa County Agreement No. 190295B is made this ____ day of October, 2021, by and between the COUNTY OF NAPA, a political subdivision of the State of California, hereinafter referred to as “COUNTY” and UNIQUE MANAGEMENT SERVICES, Inc. whose business address is 119 E Maple St, Jeffersonville IN 47130, hereinafter referred to as “CONTRACTOR”;

WHEREAS, on May 7, 2019, COUNTY engaged CONTRACTOR in Agreement 190295B to collect unpaid fines, fees and lost material costs owed to County as ordered or assessed by the Napa County Library; and

WHEREAS, CONTRACTOR now desire to amend the Agreement to increase the scope of work to include Pre-Collection Services, as well as increase the contract maximum and term;

TERMS

NOW, THEREFORE, the parties hereby amend Agreement No. 190295B in accordance with the terms and conditions set forth below:

1. Exhibit "A" of the Agreement is rescinded and replaced in full by that document entitled Exhibit "A-1", and all references in the Agreement to Exhibit "A" shall mean Exhibit "A-1".
2. Exhibit "B" of the Agreement is rescinded and replaced in full by that document entitled Exhibit "B-1", and all references in the Agreement to Exhibit "B" shall mean Exhibit "B-1".
3. Paragraph 3 “Compensation” is amended to read in full as follows:
 - (a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit “B-1,” 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 fifty thousand dollars (\$50,000) for professional services; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.
4. Addendum 1, attached hereto is incorporated into the Agreement effective July 1, 2021.
5. This Amendment No. 1 shall be effective July 1, 2021.
6. The Contract term is hereby extended through June 30, 2026.

7. All other terms and conditions of Agreement No. 190295B shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment of Napa County Agreement No. 190295B was executed by the parties hereto as of the date first above written.

Unique Management Services

By Nicole Atkins
Nicole Atkins
President/CEO

By Charlie Gary
Charlie Gary
Secretary/Treasurer

"CONTRACTOR"

NAPA COUNTY, a political subdivision of
the State of California

By _____
ALFREDO PEDROZA, Chair
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Susan B. Altman, Deputy</u> County Counsel</p> <p>Date: <u>October 1, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>_____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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EXHIBIT “A-1”

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services:

I. DESCRIPTION OF SERVICES

Fines, Fees and Materials Recovery Service:

The LIBRARY has a direct and vital interest in the collection of revenues owed to LIBRARY and COUNTY as they relate to materials recovery, fine and processing fees. To achieve the highest level of performance in collection services, LIBRARY and COUNTY wish to contract for collection services in LIBRARY fine, fee and materials recovery collection management.

When a Library patron has obligation for which the LIBRARY or COUNTY has imposed a fine, fee, or cost; and allows a cash amount in lieu of fine, fee or cost it becomes an outstanding account. On a weekly basis, LIBRARY shall refer and assign to CONTRACTOR outstanding accounts that include, but are not limited to, lost materials, cost recovery, fines, fees associated with lost materials, overdue fines totaling or exceeding \$25.00

Once LIBRARY refers CONTRACTOR an outstanding account, CONTRACTOR will be responsible for notifying patrons of amounts owed. CONTRACTOR notify patrons regarding the amounts they owe and direct them to the LIBRARY to pay outstanding accounts. CONTRACTOR shall provide LIBRARY with any addresses obtained through these contacts. The CONTRACTOR will accept accounts by electronic batch transfer.

All payments collected from patrons on outstanding accounts will be made directly to LIBRARY, not collected by CONTRACTOR, in the form of cash, check or credit card. LIBRARY has received “Right of Endorsement” in the instance that checks are mailed directly to CONTRACTOR or written out to CONTRACTOR.

Pre-Collection Service:

CONTRACTOR UNIQUE MANAGEMENT SERVICES, INC. (UNIQUE) was developed with the intent to provide professional communication and collection solutions to libraries. UNIQUE’S Gentle Nudge® Process is designed to increase the recovery of materials, fines, and fees, while ensuring the maintenance of customer goodwill. Unique strives to provide a high level of service to our clients, as well as their customers. We understand the importance of customer goodwill and take many steps to ensure this is maintained throughout all services. UNIQUE is the existing vendor for Napa County Library for collection services. As such, we are intimately familiar with the requirements and can meet expectations. Implementation of both services would be seamless.

PRE-COLLECTION NOTIFICATION SERVICES

All pre-collection notices have been closely developed in concert with the library to ensure the quality and wording meets the exacting expectations of both the library and the customer. Wording can be changed to meet the needs of the library and UNIQUE has the ability to send these notice types via print, telephone, SMS or HTML email.

UNIQUE can provide pre-collection notices (Overdue, Bill and Hold) in the desired print format and also has the ability to provide those notices via telephone notification, SMS notification and email notification (via our Message Bee service). Napa County Library will approve all wording that is included on the pre-collection notices prior to notices being delivered to customers.

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 report.

EXHIBIT “B-1”

COMPENSATION

Fines, Fees and Materials Recovery Service \$30,000:

A flat rate of \$9.45 per referred outstanding account. CONTRACTOR further agrees that all payments collected from patrons on outstanding accounts will be made directly to LIBRARY and that CONTRACTOR will invoice COUNTY for all outstanding charges.

Pre-Collection Service \$10,000:

COUNTY will be billed once per month for the previous month's total of notices and bills sent at the following rate: \$0.79 per notice. Prices will be protected from any additional increases with the sole exception of any U.S. postal price increase, which Library agrees to pay. Unique Management Services agrees to customize print notices to the requirements of the Library. The Library shall give Unique Management Services final approval of all notices prior to starting services.

Additional Services (including maintenance fees) \$10,000:

Unique Management Services charges an annual maintenance fee of \$500 (this includes 5 hours of maintenance). Any additional services as requested and/or approved by the Director of Library Services

Contract Maximum \$50,000



ADDENDUM 1 to Materials Recovery/Collection Service

SCOPE OF WORK for Pre-Collection Service

CONTRACTOR UNIQUE MANAGEMENT SERVICES, INC. (UNIQUE) was developed with the intent to provide professional communication and collection solutions to libraries. UNIQUE'S Gentle Nudge® Process is designed to increase the recovery of materials, fines, and fees, while ensuring the maintenance of customer goodwill. Unique strives to provide a high level of service to our clients, as well as their customers. We understand the importance of customer goodwill and take many steps to ensure this is maintained throughout all services. UNIQUE is the existing vendor for Napa County Library for collection services. As such, we are intimately familiar with the requirements and can meet expectations. Implementation of both services would be seamless.

PRE-COLLECTION NOTIFICATION SERVICES

All pre-collection notices have been closely developed in concert with the library to ensure the quality and wording meets the exacting expectations of both the library and the customer. Wording can be changed to meet the needs of the library and UNIQUE has the ability to send these notice types via print, telephone, SMS or HTML email.

UNIQUE can provide pre-collection notices (Overdue, Bill and Hold) in the desired print format and also has the ability to provide those notices via telephone notification, SMS notification and email notification (via our Message Bee service). Napa County Library will approve all wording that is included on the pre-collection notices prior to notices being delivered to customers.

The UNIQUE Print Notification Service is part of our on-going commitment to provide efficient solutions for libraries. Below are a few highlights of this add-on service:

Cost is \$.079* per notice. Notices printed on 8½" x 11" paper with the library logo allowing significant room to communicate with patrons. Up to 16 items can be listed on EACH notice; thereby, reducing the number of notices that are mailed and limiting the overall cost.

The library has full control over the wording used on the notice(s).

All notices are run through our National Change of Address (NCOA) service. UNIQUE provides the library with a change of address report for new addresses.

A confirmation email indicating receipt of each file submitted. An additional email is also generated once files have been processed providing the number of notices printed and number of records rejected due to insufficient address information.

The library provides UNIQUE with an output of their notice file. UNIQUE is accommodating receipt of files in various formats; Excel or Text formats are most common.

** After the initial year an annual Maintenance Fee of \$500 per client is charged. Per notice prices will be protected from any additional increases with the sole exception of United States postal price increases, which Library agrees to pay.*

Unique Management Services, Inc.

By Nicole Atkins

Nicole Atkins, President and CEO

Unique Management Services, Inc.

By Charles Gary

Charles Gary, Secretary/Treasurer

"CONTRACTOR"

NAPA COUNTY, a political subdivision of
the State of California

By _____

Alfredo Pedroza, Chair Board of Supervisors

"COUNTY"



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-909

TO: Board of Supervisors
FROM: David Morrison - Director of Planning, Building and Environmental Services
REPORT BY: Pamela Arifian - Planner III
SUBJECT: Wildlife Conservation Commission Budget Recommendation in Support of Grant Requests

RECOMMENDATION

Director of Planning, Building and Environmental Services requests approval of and authorization for the Chair to sign the following grant agreements for the term July 1, 2021 through June 30, 2022 for a total of \$31,000 pursuant to recommendations by the Wildlife Conservation Commission:

1. \$10,000 with Land Trust of Napa County for invasive plant removal on a 14-acre meadow in Aetna Springs Preserve;
2. \$8,000 with Napa County Resource Conservation District to purchase materials and provide technical assistance for Monarch Habitat project; and
3. \$13,000 with Napa Wildlife Rescue in support of part-time Education Coordinator.

EXECUTIVE SUMMARY

The Napa County Wildlife Conservation Commission (WCC) held a special meeting on August 30, 2021 to conduct annual grant application review and to develop funding recommendations. The WCC reviewed grant proposals from seven groups and organizations that requested a total of \$75,554 in funding from the WCC budget. The WCC decided unanimously not to recommend funding for a new wood chipper requested by Napa County Parks and Open Space District, and to recommend approval of six (6) grant proposals for a total amount of \$50,000. Funding for WCC grants is provided by Department of Fish and Wildlife court fines and settlements, as well as local fines and settlements that are intended for this specific purpose. Napa County General Fund allocated \$50,000 for Fiscal Year 2021-2022 to the WCC budget, which will be used to supplement the difference between CDFW monies and the grant award total of \$50,000.

Pursuant to the Napa County Purchasing Policy, it is requested the Board execute grant agreements for Land

Trust of Napa County, Napa County Resource Conservation District, and Napa Wildlife Rescue. Grant agreements for International Bird Rescue, ICARE, and Napa-Solano Audubon qualify for PBES Director approval and therefore do not require action by the Board.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Budget Unit 21200 (Wildlife Conservation): For Fiscal Year 2021-2022, \$50,000 was budgeted for grant expenditures
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Wildlife Conservation Commission grants support wildlife conservation and other related projects, consistent with State guidelines. Funding for grants is provided by the California Department of Fish and Wildlife court fines/settlements, local fines/settlements that are intended for this specific purpose, and the General Fund.
Is the general fund affected?	Yes
Future fiscal impact:	No impacts beyond Fiscal Year 2021-2022
Consequences if not approved:	The proposed wildlife conservation projects would not be undertaken at this time and grant funds would not be expended until such time as the Wildlife Conservation Commission could consider grant applications again in 2022 and provide recommendations to the Board.
County Strategic Plan pillar addressed:	Vibrant and Sustainable Environment
Additional Information	The proposals from the Institute for Conservation, Advocacy, Research, and Education (ICARE), Land Trust of Napa County, Napa County Resource Conservation District (RCD), Napa Wildlife Rescue (NWR), International Bird Rescue (IBR), and Napa-Solano Audubon (NSA) are not projects as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposals from the International Bird Rescue (IBR), Institute for Conservation, Advocacy, Research, and Education (ICARE), Land Trust of Napa County, Napa County Resource Conservation District (RCD), Napa Wildlife Rescue (NWR), and Napa-Solano Audubon (NSA) are not projects as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The WCC conducts four meetings annually, with one meeting dedicated to conducting an annual grant funding review. On August 30, 2021, the WCC held a special meeting to conduct their annual grant review and to develop their funding recommendations. The WCC reviewed grant proposals from seven (7) organizations requesting a total of \$75,554 from the WCC budget. The WCC determined that one grant proposal (by Napa County Parks and Open Space District for \$14,000 for a wood chipper) would not to be recommended for funding, in favor of supporting the projects more closely aligned with the eligibility criteria and priorities of the WCC. Due to the WCC's limited budget of \$50,000, the remaining six requests were recommended for award, including full funding for NSA, and reduced awards for the remaining five requests (IBR at 81%, NWR at 91%, ICARE at 80%, LTNC at 69%, and RCD at 80% of their requests) so that grants could be recommended to all organizations.

The recommended grants totaling \$50,000 would provide for the following projects:

1. \$4,000 with International Bird Rescue to fund the rescue and rehabilitation of aquatic birds from Napa County;
2. \$8,000 with ICARE for analysis of data from the 2021 Water Quality and Bio-Assessment Sampling Project from Napa River and preparation of a Final Report;
3. \$10,000 with Land Trust of Napa County for invasive plant removal on a 14-acre meadow in Aetna Springs Preserve;
4. \$7,000 with Napa-Solano Audubon in support of a part-time Education Coordinator;
5. \$8,000 with Napa County Resource Conservation District to purchase materials and provide technical assistance for Monarch Habitat project;
6. \$13,000 with Napa Wildlife Rescue in support of part-time Education Coordinator.

NAPA COUNTY AGREEMENT NO. _____
FUNDING AGREEMENT

THIS FUNDING AGREEMENT (“Agreement”) is made and entered into as of this _____ day of _____, 2021, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Land Trust of Napa County, a community-based 501 (c)(3) non-profit organization, whose mailing address is 1700 Soscol Avenue Suite 20, Napa, California, 94559, hereinafter referred to as "GRANTEE".

RECITALS

WHEREAS, GRANTEE is a community-based non-profit organization providing preservation of public open space, biodiversity, and agricultural land in Napa County, California; and

WHEREAS, the COUNTY Wildlife Conservation Commission receives monies from the California Department of Fish and Wildlife fines and settlements, as well as local fines and settlements that are designated for the Wildlife Conservation Commission and desires to make those funds available in the form of grants to organizations and individuals engaging in activities that protect, conserve, propagate, and preserve fish and wildlife within Napa County; and

WHEREAS, GRANTEE has applied for a grant to hire two six-person American Conservation Experience (ACE) crews to focus on the manual removal of Woolly-podded Vetch (*Vicia villosa ssp. Varia*) and Yellow Star Thistle (*Centaurea solstitialis*) at the 14-acre meadow in the Aetna Springs Preserve; and

WHEREAS, the COUNTY Wildlife Conservation Commission has limited monies available for grants and desires to recommend grants to as many organizations and individuals engaging in activities that protect, conserve, propagate, and preserve fish and wildlife within Napa County as it can; and

WHEREAS, the COUNTY Wildlife Conservation Commission has reviewed GRANTEE’s grant proposal and recommends that the COUNTY Board of Supervisors expend funds to assist GRANTEE in meadow habitat restoration work by hiring American Conservation Experience (ACE) crews to focus on non-native plant removal; and

WHEREAS, COUNTY has budgeted the expenditure of and GRANTEE is willing to accept and utilize COUNTY’s monies for the purposes and under the terms and conditions set forth herein.

TERMS

NOW, THEREFORE, in consideration of the mutual promises of COUNTY and GRANTEE, contained herein, COUNTY and GRANTEE agree as follows:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2022; except that the obligations of the parties under Paragraphs 9 (Insurance) and 10 (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 GRANTEE to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 6 (Access to Records/Retention) and 12 (Taxes).

2. **Use of Funds by GRANTEE.** GRANTEE shall use all funds conveyed to GRANTEE by COUNTY under this Agreement towards some or all of the project described in Exhibit "A". GRANTEE understands that funds provided in this Agreement are a one-time grant, and GRANTEE accepts responsibility for any and all cost of maintenance, repairs or replacement of items purchased under this Agreement.

3. **Amount of Grant.**

(a) Grant Amounts by Category. In consideration of GRANTEE's provision of the services set forth in Exhibit "A", COUNTY grants GRANTEE those funds which correspond to the actual costs incurred by GRANTEE.

(b) Maximum Grant Amount. Notwithstanding subparagraph (a), the maximum grant under this Agreement shall be a total of Ten Thousand Dollars (\$10,000).

4. **Method of Payment.** COUNTY shall pay GRANTEE the sum specified in paragraph 3 in one lump sum within thirty (30) days of the completion of the project and receipt of the final invoice.

5. **Reporting.** Prior to receipt of funds provided under this Agreement, GRANTEE shall submit to COUNTY a copy of the receipt(s) or statement report detailing the use of funds under this Agreement.

6. **Records Retention and Monitoring.** GRANTEE shall maintain financial and statistical records which fairly reflect the activities of GRANTEE funded under this Agreement. COUNTY and any state agency providing through COUNTY any portion of the funds granted under this Agreement shall have access to any books, documents, papers and records of GRANTEE 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 state law, GRANTEE shall maintain all such records for no less than five (5) years after COUNTY makes the final grant payment hereunder, all activities of GRANTEE funded under this Agreement have been completed, and all pending matters are closed, whichever is later.

7. **Independent Contractor.** GRANTEE shall perform this Agreement as an independent contractor and GRANTEE and the officers, agents, employees, and contractors of GRANTEE are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation. GRANTEE shall, at its own risk and expense, determine the method and manner by which the activities of GRANTEE to COUNTY under this Agreement shall be

performed; provided, however, that COUNTY may monitor the progress of the activities of GRANTEE and its officers, employees, agents and contractors. GRANTEE and its officers, employees, agents and contractors shall be entitled to none of the benefits accorded to a COUNTY employee. COUNTY shall not deduct or withhold any amounts whatsoever from the grant paid to GRANTEE, including, but not limited to amounts required to be withheld for state and federal taxes. As between GRANTEE and COUNTY, GRANTEE alone shall be responsible for all such payments.

8. **Specific Performance.** It is agreed that GRANTEE, including the agents or employees of GRANTEE, shall be the sole providers of the services required by this Agreement. Because the services to be performed by GRANTEE 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 GRANTEE.

9. **Insurance.** GRANTEE 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, GRANTEE shall provide workers' compensation insurance for the performance of any of GRANTEE'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. GRANTEE 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 GRANTEE or any officer, agent, or employee of GRANTEE under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

2. RESERVED

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 GRANTEE's business of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 9(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 GRANTEE with the Planning, Building, and Environmental Services Department prior to commencement of performance of any of GRANTEE's duties; 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. For the commercial general liability insurance coverage referenced in 9(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 9(b)(3) GRANTEE 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, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of GRANTEE 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 GRANTEE 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. Upon request by COUNTY's Risk Manager, GRANTEE 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 GRANTEE 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 GRANTEE shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

10. **Indemnification.** GRANTEE shall defend, indemnify and hold harmless COUNTY, its officers, agents and employees from any claim, loss or liability including, without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by GRANTEE, or its officers, agents, or employees, of activities of GRANTEE funded under this Agreement.

(a) In General. To the full extent permitted by law, GRANTEE 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 of GRANTEE 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, 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) Employee Character and Fitness. GRANTEE accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of GRANTEE 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, GRANTEE 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 GRANTEE's actions in this regard.

11. **Compliance with Laws.** GRANTEE 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, GRANTEE 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 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 or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. GRANTEE 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, GRANTEE 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 GRANTEE 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 GRANTEE 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. GRANTEE agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of GRANTEE 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. GRANTEE shall make the required documentation available upon request to COUNTY for inspection.

12. **Taxes.** GRANTEE 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. GRANTEE 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 GRANTEE'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, GRANTEE agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

13. **Authority to Contract.** GRANTEE and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

14. **No Waiver.** 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.

15. **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

PBES Department
Brian Bordona
Deputy Planning Director
1195 3rd Street, 2nd Floor

GRANTEE

Land Trust of Napa County
Attn: Mike Palladini
Land Stewardship Manager
1700 Soscol Avenue, Suite 20

16. **No Assignments or Subcontracts.** A consideration of this Agreement is the community reputation and special expertise, resources, and service program of GRANTEE. For this reason, GRANTEE shall not assign any interest in this Agreement for any purpose without the prior written consent of COUNTY.

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.

18. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** GRANTEE 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. GRANTEE 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 August 23, 2005.

(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 GRANTEE 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.

19. **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.

(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.

20. **Limitation on COUNTY Participation.** No action or representation by COUNTY has been made, or shall be construed by GRANTEE as evidence that COUNTY shall provide any monies for the support of the activities of GRANTEE other than for the items described in Exhibit “A” during the term of the Agreement.

21. **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.

22. **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.

23. **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.

[This space intentionally left blank.]

24. **Entirety of Contract.** This 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.

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

LAND TRUST OF NAPA COUNTY

By _____

Signature

Title: _____

Printed Name

"GRANTEE"

NAPA COUNTY, a political subdivision of
the State of California

By _____

ALFREDO PEDROZA, Chair of the
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Laura J. Anderson (e-sign)</u> Laura J. Anderson Deputy County Counsel</p> <p>Date: <u>September 13, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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NAPA COUNTY AGREEMENT NO. _____
FUNDING AGREEMENT

THIS FUNDING AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2021, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Napa County Resource Conservation District (RCD), a Special District of the State of California, whose mailing address is 1303 Jefferson Street, Suite 500B, Napa, CA 94559, hereinafter referred to as "GRANTEE".

RECITALS

WHEREAS, GRANTEE is a Special District of the State of California providing technical assistance, education, outreach, and conducts scientific research on natural resource issues in Napa County, California; and

WHEREAS, the COUNTY Wildlife Conservation Commission receives monies from the California Department of Fish and Game fines and settlement, as well as local fines and settlements that are designated for the Wildlife Conservation Commission and desires to make those funds available in the form of grants to organizations and individuals engaging in activities that protect, conserve, propagate, and preserve fish and wildlife within Napa County; and

WHEREAS, GRANTEE has applied for a grant to provide funding to purchase plants and materials and provide technical assistance in creating and enhancing Western Monarch Habitat in Napa County; and

WHEREAS, the COUNTY Wildlife Conservation Commission has limited monies available for grants and desires to recommend grants to as many organizations and individuals engaging in activities that protect, conserve, propagate, and preserve fish and wildlife within Napa County as it can; and

WHEREAS, the COUNTY Wildlife Conservation Commission has reviewed GRANTEE's grant proposal and recommends that the COUNTY Board of Supervisors expend funds to assist GRANTEE with their Monarch butterfly habitat creation and enhancement program; and

WHEREAS, COUNTY has budgeted the expenditure of and GRANTEE is willing to accept and utilize COUNTY's monies for the purposes and under the terms and conditions set forth herein.

TERMS

NOW, THEREFORE, in consideration of the mutual promises of COUNTY and GRANTEE, contained herein, COUNTY and GRANTEE agree as follows:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2022; except that the obligations of the

parties under Paragraphs 9 (Insurance) and 10 (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 GRANTEE to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 6 (Access to Records/Retention) and 12 (Taxes).

2. **Use of Funds by GRANTEE.** GRANTEE shall use all funds conveyed to GRANTEE by COUNTY under this Agreement as described in Exhibit "A". GRANTEE understands that funds provided in this Agreement are a one-time grant, and GRANTEE accepts responsibility for any and all cost of maintenance, repairs or replacement of items purchased under this Agreement.

3. **Amount of Grant.**

(a) Grant Amounts by Category. In consideration of GRANTEE's provision of the services set forth in Exhibit "A", COUNTY grants GRANTEE those funds which correspond to the actual costs incurred by GRANTEE.

(b) Maximum Grant Amount. Notwithstanding subparagraph (a), the maximum grant under this Agreement shall be a total of Eight Thousand Dollars (\$8,000).

4. **Method of Payment.** COUNTY shall pay GRANTEE the sum specified in paragraph 3 in one lump sum within thirty (30) days of the completion of the project and receipt of the final invoice.

5. **Reporting.** Prior to receipt of funds provided under this Agreement, GRANTEE shall submit to COUNTY a copy of the receipt(s) or statement report detailing the use of funds under this Agreement.

6. **Records Retention and Monitoring.** GRANTEE shall maintain financial and statistical records which fairly reflect the activities of GRANTEE funded under this Agreement. COUNTY and any state agency providing through COUNTY any portion of the funds granted under this Agreement shall have access to any books, documents, papers and records of GRANTEE 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 state law, GRANTEE shall maintain all such records for no less than five (5) years after COUNTY makes the final grant payment hereunder, all activities of GRANTEE funded under this Agreement have been completed, and all pending matters are closed, whichever is later.

7. **Independent Contractor.** GRANTEE shall perform this Agreement as an independent contractor and GRANTEE and the officers, agents, employees, and contractors of GRANTEE are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation. GRANTEE shall, at its own risk and expense, determine the method and manner by which the activities of GRANTEE to COUNTY under this Agreement shall be performed; provided, however, that COUNTY may monitor the progress of the activities of GRANTEE and its officers, employees, agents and contractors. GRANTEE and its officers,

employees, agents and contractors shall be entitled to none of the benefits accorded to a COUNTY employee. COUNTY shall not deduct or withhold any amounts whatsoever from the grant paid to GRANTEE, including, but not limited to amounts required to be withheld for state and federal taxes. As between GRANTEE and COUNTY, GRANTEE alone shall be responsible for all such payments.

8. **Specific Performance.** It is agreed that GRANTEE, including the agents or employees of GRANTEE, shall be the sole providers of the services required by this Agreement. Because the services to be performed by GRANTEE 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 GRANTEE.

9. **Insurance.** GRANTEE 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, GRANTEE shall provide workers' compensation insurance for the performance of any of GRANTEE'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. GRANTEE 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 GRANTEE or any officer, agent, or employee of GRANTEE under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

2. RESERVED

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 GRANTEE's business of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 9(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 GRANTEE with the Planning, Building, and Environmental Services Department prior to commencement of performance of any of GRANTEE's duties; 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. For the commercial general liability insurance coverage referenced in 9(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 9(b)(3) GRANTEE 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, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of GRANTEE 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 GRANTEE 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. Upon request by COUNTY's Risk Manager, GRANTEE 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 GRANTEE 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 GRANTEE shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

10. **Indemnification.** GRANTEE shall defend, indemnify and hold harmless COUNTY, its officers, agents and employees from any claim, loss or liability including, without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by GRANTEE, or its officers, agents, or employees, of activities of GRANTEE funded under this Agreement.

(a) In General. To the full extent permitted by law, GRANTEE and COUNTY shall each defend and hold harmless each other as well as their respective officers, agents, employees and 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 out of or connected with any acts or omissions of that party or its officers, agents, employees, volunteers, or contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. 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. GRANTEE accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of GRANTEE under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law and deemed to be necessary by the Executive Director. Notwithstanding anything to the contrary in this Paragraph, GRANTEE 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 GRANTEE's actions in this regard.

11. **Compliance with Laws.** GRANTEE 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, GRANTEE 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 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 or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. GRANTEE 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, GRANTEE 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 GRANTEE 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 GRANTEE 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.** GRANTEE agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of GRANTEE 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. GRANTEE shall make the required documentation available upon request to COUNTY for inspection.

12. **Taxes.** GRANTEE 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. GRANTEE 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 GRANTEE'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, GRANTEE agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

13. **Authority to Contract.** GRANTEE and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

14. **No Waiver.** 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.

15. **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

PBES Department
Brian Bordona
Deputy Planning Director
1195 3rd Street, 2nd Floor
Napa, CA 94559

GRANTEE

Napa County RCD
Attn: Ruby Stahel
Conservation Project Manager
1303 Jefferson Street, Suite 500B
Napa, CA 94559

16. **No Assignments or Subcontracts.** A consideration of this Agreement is the community reputation and special expertise, resources, and service program of GRANTEE. For this reason, GRANTEE shall not assign any interest in this Agreement for any purpose without the prior written consent of COUNTY.

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.

18. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** GRANTEE 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. GRANTEE 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 August 23, 2005.

(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 GRANTEE 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.

19. **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.

(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.

20. **Limitation on COUNTY Participation.** No action or representation by COUNTY has been made, or shall be construed by GRANTEE as evidence that COUNTY shall provide any monies for the support of the activities of GRANTEE other than for the items described in Exhibit “A” during the term of the Agreement.

21. **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.

22. **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.

23. **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.

[This space intentionally left blank.]

24. **Entirety of Contract.** This 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.

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

NAPA COUNTY RESOURCE CONSERVATION
DISTRICT, a political subdivision of the State of California

By _____
Signature
Title: _____

Printed Name

"GRANTEE"

NAPA COUNTY, a political subdivision of the State of
California

By _____
ALFREDO PEDROZA, Chair of the
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Laura J. Anderson (e-sign)</u> Deputy County Counsel</p> <p>Date: <u>September 13, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
<p>APPROVED AS TO FORM NCRCD Legal Counsel</p> <p>By: _____ Date: _____</p>	<p>ATTEST: ANNA MATTINSON Secretary of the Board of Directors</p> <p>By: _____ Date: _____</p>	

NAPA COUNTY AGREEMENT NO. _____
FUNDING AGREEMENT

THIS FUNDING AGREEMENT ("Agreement") is made and entered into as of this _____ day of _____, 2021, by and between the NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Napa Wildlife Rescue, a 501 (c)(3) non-profit corporation, whose mailing address is P.O. Box 2571, Napa, CA 94558, hereinafter referred to as "GRANTEE".

RECITALS

WHEREAS, GRANTEE is a non-profit corporation supporting the presence of wildlife through rehabilitation and public awareness through community outreach in Napa County, California; and

WHEREAS, the COUNTY Wildlife Conservation Commission receives monies from the California Department of Fish and Game fines and settlement, as well as local fines and settlements that are designated for the Wildlife Conservation Commission and desires to make those funds available in the form of grants to organizations and individuals engaging in activities that protect, conserve, propagate, and preserve fish and wildlife within Napa County; and

WHEREAS, GRANTEE has applied for a grant to fund a part-time Education Coordinator to manage outreach, facilitate presentations, assist in training new volunteers, and related activities from their facility located in Napa County; and

WHEREAS, the COUNTY Wildlife Conservation Commission has limited monies available for grants and desires to recommend grants to as many organizations and individuals engaging in activities that protect, conserve, propagate, and preserve fish and wildlife within Napa County as it can; and

WHEREAS, the COUNTY Wildlife Conservation Commission has reviewed GRANTEE's grant proposal and recommends that the COUNTY Board of Supervisors expend funds to assist GRANTEE education program coordination, training and facilitation; and

WHEREAS, COUNTY has budgeted the expenditure of and GRANTEE is willing to accept and utilize COUNTY's monies for the purposes and under the terms and conditions set forth herein.

TERMS

NOW, THEREFORE, in consideration of the mutual promises of COUNTY and GRANTEE, contained herein, COUNTY and GRANTEE agree as follows:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2022; except that the obligations of the parties under Paragraphs 9 (Insurance) and 10 (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 GRANTEE to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 6 (Access to Records/Retention) and 12 (Taxes).

2. **Use of Funds by GRANTEE.** GRANTEE shall use all funds conveyed to GRANTEE by COUNTY under this Agreement as described in Exhibit "A". GRANTEE understands that funds provided in this Agreement are a one-time grant, and GRANTEE accepts responsibility for any and all cost of maintenance, repairs or replacement of items purchased under this Agreement.

3. **Amount of Grant.**

(a) Grant Amounts by Category. In consideration of GRANTEE's provision of the services set forth in Exhibit "A", COUNTY grants GRANTEE those funds which correspond to the actual costs incurred by GRANTEE.

(b) Maximum Grant Amount. Notwithstanding subparagraph (a), the maximum grant under this Agreement shall be a total of Thirteen Thousand Dollars (\$13,000).

4. **Method of Payment.** COUNTY shall pay GRANTEE the sum specified in paragraph 3 in one lump sum within thirty (30) days of the completion of the project and receipt of the final invoice.

5. **Reporting.** Prior to receipt of funds provided under this Agreement, GRANTEE shall submit to COUNTY a copy of the receipt(s) or statement report detailing the use of funds under this Agreement.

6. **Records Retention and Monitoring.** GRANTEE shall maintain financial and statistical records which fairly reflect the activities of GRANTEE funded under this Agreement. COUNTY and any state agency providing through COUNTY any portion of the funds granted under this Agreement shall have access to any books, documents, papers and records of GRANTEE 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 state law, GRANTEE shall maintain all such records for no less than five (5) years after COUNTY makes the final grant payment hereunder, all activities of GRANTEE funded under this Agreement have been completed, and all pending matters are closed, whichever is later.

7. **Independent Contractor.** GRANTEE shall perform this Agreement as an independent contractor and GRANTEE and the officers, agents, employees, and contractors of GRANTEE are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation. GRANTEE shall, at its own risk and expense, determine the method and manner by which the activities of GRANTEE to COUNTY under this Agreement shall be performed; provided, however, that COUNTY may monitor the progress of the activities of GRANTEE and its officers, employees, agents and contractors. GRANTEE and its officers, employees, agents and contractors shall be entitled to none of the benefits accorded to a

COUNTY employee. COUNTY shall not deduct or withhold any amounts whatsoever from the grant paid to GRANTEE, including, but not limited to amounts required to be withheld for state and federal taxes. As between GRANTEE and COUNTY, GRANTEE alone shall be responsible for all such payments.

8. **Specific Performance.** It is agreed that GRANTEE, including the agents or employees of GRANTEE, shall be the sole providers of the services required by this Agreement. Because the services to be performed by GRANTEE 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 GRANTEE.

9. **Insurance.** GRANTEE 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, GRANTEE shall provide workers' compensation insurance for the performance of any of GRANTEE'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. GRANTEE 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 GRANTEE or any officer, agent, or employee of GRANTEE under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

2. RESERVED

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 GRANTEE's business of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 9(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 GRANTEE with the Planning, Building, and Environmental Services Department prior to commencement of performance of any of GRANTEE's duties; 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. For the commercial general liability insurance coverage referenced in 9(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 9(b)(3) GRANTEE 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, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of GRANTEE 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 GRANTEE 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. Upon request by COUNTY's Risk Manager, GRANTEE 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 GRANTEE 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 GRANTEE shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

10. **Indemnification.** GRANTEE shall defend, indemnify and hold harmless COUNTY, its officers, agents and employees from any claim, loss or liability including, without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by GRANTEE, or its officers, agents, or employees, of activities of GRANTEE funded under this Agreement.

(a) In General. To the full extent permitted by law, GRANTEE 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 of GRANTEE 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, 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) Employee Character and Fitness. GRANTEE accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of GRANTEE 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, GRANTEE 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 GRANTEE's actions in this regard.

11. Compliance with Laws. GRANTEE 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, GRANTEE 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 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 or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. GRANTEE 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, GRANTEE 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 GRANTEE 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 GRANTEE 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. GRANTEE agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of GRANTEE 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. GRANTEE shall make the required documentation available upon request to COUNTY for inspection.

12. **Taxes.** GRANTEE 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. GRANTEE 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 GRANTEE'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, GRANTEE agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

13. **Authority to Contract.** GRANTEE and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

14. **No Waiver.** 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.

15. **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

PBES Department
Brian Bordona
Deputy Planning Director
1195 3rd Street, 2nd Floor
Napa, CA 94559

GRANTEE

Napa Wildlife Rescue
Attn: John Comisky
Board Member
P.O. Box 2571
Napa, CA 94558

16. **No Assignments or Subcontracts.** A consideration of this Agreement is the community reputation and special expertise, resources, and service program of GRANTEE. For this reason, GRANTEE shall not assign any interest in this Agreement for any purpose without the prior written consent of COUNTY.

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.

18. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** GRANTEE 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. GRANTEE 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 August 23, 2005.

(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 GRANTEE 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.

19. **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.

(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.

20. **Limitation on COUNTY Participation.** No action or representation by COUNTY has been made, or shall be construed by GRANTEE as evidence that COUNTY shall provide any monies for the support of the activities of GRANTEE other than for the items described in Exhibit “A” during the term of the Agreement.

21. **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.

22. **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.

23. **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.

[This space intentionally left blank.]

24. **Entirety of Contract.** This 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.

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

NAPA WILDLIFE RESCUE

By _____

Signature

Title: _____

Printed Name

"GRANTEE"

NAPA COUNTY, a political subdivision of
the State of California

By _____

ALFREDO PEDROZA, Chair of the
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Laura J. Anderson (e-sign)</u> Laura J. Anderson Deputy County Counsel</p> <p>Date: <u>September 13, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-892

TO: Board of Supervisors
FROM: Steven Lederer - Director of Public Works
REPORT BY: John Vicencio - Associate Engineer
SUBJECT: LNU Fire Complex Guardrail Repair Project, RDS 20-39, Award of Contract and Budget Transfer

RECOMMENDATION

Director of Public Works requests the following regarding the LNU Fire Complex Guardrail Repair Project, RDS 20-39:

1. Award of the contract to Highway Specialty Company, Inc. of Palo Cedro, California for their low base bid of \$347,056 and for the Chair to sign the construction contract; and
2. Approval of a Budget Transfer for the following (4/5 vote required):
 - a. Increase appropriations by \$440,056 in the Accumulated Capital Outlay Fund (ACO) (Fund 3000, Org 3000000) with the use of its available fund balance to be transferred to 2020 LNU-FEMA Guardrail Project (Fund 2040, Org 2040500, Project 21027); and
 - b. Increase appropriations by \$440,056 in Project 21027, RDS 20-39 offset by transfer from the ACO budget.

EXECUTIVE SUMMARY

Guardrails along Berryessa-Knoxville Rd (North of Pope Canyon Rd), Steele Canyon Road, and Wragg Canyon Road were damaged in the LNU fire. These repairs are eligible for State and Federal Emergency Management Administration (FEMA) reimbursement for guardrail repairs.

Staff has received a Notice of Obligation and Payment letter from CalOES that obligates a combined federal and state amount of \$761,600 to fund this project.

On August 24, 2021, the Board of Supervisors (BOS) approved the plans and specifications and authorized the advertisement for the "LNU Fire Complex Guardrail Repair Project", RDS 20-39. Bids were opened on

September 30, 2021 with lowest bid of \$347,056 from Highway Specialty Company, of Palo Cedro, CA. Highway Specialty Company, Inc. is not a local vendor. Staff requests the BOS award the construction contract and approve the proposed budget transfer from the ACO to the project program fund.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	The existing budget for Project 21027 is \$75,000 and was previously funded by the General Fund 2020 LNU Fire budget (Fund 1000, Org 1058006) for the design phase. Additional funds of \$440,056 are requested at this time from the ACO budget Fund 3000 Org 3000000 to fund construction phase. These funds will be utilized in advance of receiving obligated FEMA/CalOES reimbursement. Once the County receives reimbursement, those funds will be returned to the General Fund and ACO.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	The requested approval will allow for the construction phase of the project.
Is the general fund affected?	Yes
Future fiscal impact:	Construction will commence during the current Fiscal Year 2021-22. The project will require full funding from the Accumulated Capital Outlay (ACO) Fund until the FEMA and CalOES reimbursement and audit period is over (3 years) at which point the reimbursed money will be returned to the ACO.
Consequences if not approved:	The fire-induced roadside safety hazards would not be mitigated.
County Strategic Plan pillar addressed:	Healthy, Safe, and Welcoming Place to Live, Work, and Visit

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is exempt from CEQA, as Per Title 14, California Code of Regulations, Chapter 3, Article 18, Section 15269, Emergency Projects (State CEQA Guidelines) and therefore CEQA is not applicable. This project will comply with all National Environmental Policy Act (NEPA) requirements outlined in the FEMA/CalOES Project Worksheet.

BACKGROUND AND DISCUSSION

During the 2020 LNU Fire Complex event, significant guardrail damage occurred along multiple County-maintained roads. These roads include Berryessa-Knoxville Rd (North of Pope Canyon Rd), Steele Canyon Road, and Wragg Canyon Road.

On September 22, 2020, a budget transfer was requested and approved through Budget Transfer DPW0013 for Capital Improvement Program, Fund 2040, Subdivision 2040500, Program 21027 for \$75,000 to provide for site review, design, and bidding.

On August 6, 2021, Staff received a Notice of Obligation and Payment letter from CalOES that obligated a

combined federal and state amount of \$761,600 to fund this project.

On August 24, 2021, the Board of Supervisors approved plans and specifications for the " LNU Fire Complex Guardrail Repair Project", RDS 20-39, and authorized Public Works to advertise for sealed bids and for opening of the bids at a time, date, and location to be published by the Director of Public Works pursuant to Section 20150.8 of the Public Contract Code.

On September 30, 2021, bids were opened and the bid results are attached. Staff recommends award of the construction contract to Highway Specialty Company, Inc. of Palo Cedro, CA for their low base bid of \$347,056. A budget transfer of \$440,056 from the Accumulated Capital Outlay is also requested to fully fund this project. Highway Specialty Company, Inc. is not a local vendor. The Public Contract Code requires that the construction contract be awarded to the lowest responsible bidder regardless of whether the low bidder is local or not. Staff outreach to the local construction contractor community included advertising the request for bids in the Napa Valley Register, the Solano-Napa Builder's Exchange and by posting on the County website. Staff also sent "Notices to Contractors" to the local construction community. Once the construction contract is awarded the County will contact the Napa County Workforce Investment Board (WIB) and will require the successful contractor to contact the WIB to let the WIB know of its hiring needs.

Of note, Berryessa-Knoxville Rd (South of Pope Canyon Road), Pope Canyon Rd, and Butts Canyon Rd. were also damaged in the LNU Fire. These roads are eligible to receive emergency funding from the Federal Highway Administration (FHWA). Under a separate contract already approved by the Board, construction is underway in repairing these guardrails.

LNU FIRE COMPLEX GUARDRAIL REPAIR PROJECT, RDS 20-39
BID RESULTS

CONTRACTOR	TOTAL BASE BID
Highway Specialty Co., Inc. Palo Cedro , CA	\$347,056.00
Coral Construction Co., Inc., Wilsonville, OR	\$398,555.00
Ace Fence Co. Inc., La Puente, CA	\$462,017.00
Midstate Barrier, Inc., Stockton, CA	\$469,690.00
Dirt & Aggregate Interchange, Fairview, OR	\$493,493.00
Team Ghilotti, Inc., Petaluma, CA	\$513,141.07

County of Napa
Public Works Department

2020 LNU FIRE COMPLEX GUARDRAIL REPAIR
PROJECT, RDS 20-39 Program 21027

October 19,2021

		CONSTRUCTION PHASE				
<u>Budget Item</u>	<u>Budget Item Amount</u>	<u>Board Appropriation Request Today</u>	<u>Board Appropriation to date</u>	<u>Appropriation Amount Spent to Date</u>	<u>Appropriation Amount % Spent to Date</u>	<u>Appropriation Amount Balance</u>
Construction	\$347,056	\$347,056	\$0	\$0	0%	\$0
Construction Contingency	\$52,500	\$52,500		\$0	0%	\$0
Design and Engineering	\$75,000	\$0	\$75,000	\$38,000	51%	\$37,000
Construction Management	\$30,000	\$30,000		\$0	0%	\$0
County Project Management/Administration	\$10,500	\$10,500		\$0	0%	\$0
HAZ-MAT/Micellaneous Inspections and Fees	\$0	\$0		\$0	0%	\$0
<u>TOTAL</u>	\$515,056	\$440,056	\$75,000	\$38,000	51%	\$37,000

NAPA COUNTY AGREEMENT NO. _____

CONTRACT FOR CONSTRUCTION

THIS AGREEMENT, made this 19th day of October, 2021 by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY”, and Highway Specialty Company Inc., of Palo Cedro, CA, hereinafter referred to as “CONTRACTOR”;

TERMS

ARTICLE I. In consideration of the payments and covenants hereinafter mentioned, to be made and performed by County, and under the conditions expressed in the two (2) bonds attached hereto, Contractor shall, at Contractor’s own cost and expense, do all the work and furnish all materials, except such as are specified herein to be furnished by County, necessary to construct and complete in a good, workmanlike and substantial manner and to the satisfaction of the Napa County Board of Supervisors that project known as **LNU FIRE COMPLEX GUARDRAIL REPAIR PROJECT, RDS 20-39**, which shall be constructed in the County of Napa, California, in accordance with the Plans and Specifications (“Plans”) entitled **LNU FIRE COMPLEX GUARDRAIL REPAIR PROJECT, RDS 20-39**, the Bid submitted by Contractor (“Bid Proposal”), the Special Provisions, and the 2018 Standard Specifications of the State of California Department of Transportation (“Standard Specifications”). The Plans, Bid Proposal, Special Provisions, and Standard Specifications are hereby incorporated by reference as if set forth herein.

ARTICLE II. County hereby promises and agrees with Contractor to employ, and does hereby employ, Contractor to provide the materials and to do the work according to the terms and conditions herein contained for the prices hereinafter set forth, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth herein, and both parties hereby agree, for themselves, their heirs, executors, administrators, successors and assigns, to full performance of the covenants contained herein.

ARTICLE III. It is further expressly agreed by and between the parties that if there is any conflict between the Bid Proposal of Contractor and any of the other terms of this Contract, then such other terms shall control and any such conflicting terms of the Bid Proposal shall not be deemed to have been accepted by County.

ARTICLE IV. Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work contemplated and embraced in this Contract; for all loss and damage, arising out of the nature of such work, from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the Board of Supervisors of the County and for all risks of every description connected with the work; for all expenses incurred by or in consequence of the suspension or discontinuance of work; and for well and faithfully completing the work and the whole thereof in the manner and according to the Plans, Special Provisions, and Standard Specifications and the requirements of the Engineer under them, to wit:

LNU FIRE COMPLEX GUARDRAIL REPAIR PROJECT BERRYESSA-KNOXVILLE RD, STEELE CANYON RD, WRAGG CANYON RD RDS 20-39					
ITEM NO.	DESCRIPTION	UNIT	QTY	UNIT COST	TOTAL
GENERAL CONDITION					
1	Mobilization	LS	1	\$10,000.00	\$10,000.00
2	Traffic Control	LS	1	\$56,500.00	\$56,500.00
3	Guardrail Removal	LF	1	\$29,500.00	\$29,500.00
A. BERRYESSA-KNOXVILLE ROAD					
A1	MGS A77L2 (Steel post/Plastic Block) with 8 ft long posts	LF	1,444	\$50.50	\$72,922.00
A2	MGS A77L2 (Steel Post and Plastic Block)	LF	1,337	\$43.50	\$58,159.50
A3	MGS Terminal System A77N6 (Type SRT)	EA	18	\$3,650.00	\$65,700.00
B. STEELE CANYON ROAD					
B1	MGS A77L2 (Steel Post/Plastic Block)	LF	382	\$43.50	\$16,617.00
B2	MGS Terminal System A77P2 (Type SRT)	EA	4	\$3,650.00	\$14,600.00
B3	Modified MGS A77Q1 Type 12B Structure Approach	EA	1	\$6,400.00	\$6,400.00
ARROYO GRANDE DR.					
C1	MGS A77L2 (Steel Post/Plastic Block)	LF	45	\$43.50	\$1,957.50
C2	MGS Terminal System A77N6, (Type SRT 6-Post Assy) Nose Only	EA	2	\$3,650.00	\$7,300.00
C. WRAGG CANYON ROAD					
D1	MGS Repair	EA	2	\$3,700.00	\$7,400.00
TOTAL BASE BID		\$347, 056.00			
TOTAL BASE BID (WRITTEN) <u>\$ Three hundred forty-seven thousand and fifty-six</u> <u>and 0/100 DOLLARS</u>					

IN WITNESS WHEREOF, this Contract has been approved by County and Contractor as of the date first set forth on page C-1 of this Contract.

NAPA COUNTY, a political subdivision of
the State of California

By _____
ALFREDO PEDROZA, Chair of the
Board of Supervisors

“COUNTY”

By _____

By _____

“CONTRACTOR”

APPROVED AS TO FORM Office of County Counsel By: _____ County Counsel Date: _____	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: _____
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NOTE: *Signature of those executing for the Contractor must be acknowledged by Notary Public. If a corporation, this document must be signed by two corporate officers. The first signature must be either the Chairman of the Board, President, or any Vice President. The second signature must be the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate document demonstrating the legal authority of the signature to bind the company.*



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-953

TO: Board of Supervisors
FROM: Steven Lederer - Director of Public Works
REPORT BY: Andrea Salter - Staff Services Analyst I
SUBJECT: Professional Services Agreement with Universal Site Services, Inc. for Vehicle Power Sweeping Maintenance Services

RECOMMENDATION

Director of Public Works requests approval of and authorization for the Chair to sign an agreement with Universal Site Services, Inc. for an annual maximum amount of \$6,000 for routine services and \$23,000 for non-routine/on-call services for the term October 19, 2021 through June 30, 2024 with the option to extend annually for two (2) additional years at the maximum of \$6,240 for routine services and \$25,000 for non-routine/on-call services in years four and five for power sweeping and cleaning of the 5th Street Parking Garage, other County owned parking facilities, and a portion of Napa County Airport.

EXECUTIVE SUMMARY

Approval of this agreement will allow the County to have a contracted service provider for regular power sweeping and cleaning services located at the 5th Street Parking Garage and non-routine/on-call power sweeping and cleaning services at other County owned parking facilities and a portion of Napa County Airport.

Universal Site Services, Inc. was selected through a competitive request for proposal process and is not a local vendor.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	5020000 (5th Street Parking Garage), 5010000 (Airport) and 4300000 (Property Management)
Is it Mandatory or Discretionary?	Discretionary

Discretionary Justification:	An outside contractor is needed to maintain parking facilities and the Airport in a clean, safe and presentable condition.
Is the general fund affected?	No
Future fiscal impact:	The agreement will span three fiscal years with the option to renew for two additional years at a cost increase. The amount corresponding to each fiscal year will be budgeted accordingly in future fiscal years.
Consequences if not approved:	There would not be a maintenance contract for power sweeping services and cleaning at County-owned and maintained parking facilities or the Napa County Airport.
County Strategic Plan pillar addressed:	Effective and Open Government

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.

BACKGROUND AND DISCUSSION

Today's action would allow the County to enter into an agreement for regular power sweeping and cleaning services at the 5th Street Parking Garage and non-routine/on-call power sweeping and cleaning services at other County owned parking facilities and a portion of Napa County Airport. Universal Site Services, Inc. provided these services at the 5th Street Parking Garage and other County-owned parking facilities under Agreement No. 190131D, which expired on September 30, 2021. County staff issued a Request for Proposals (RFP) on August 2, 2021. A total of two vendors submitted proposals. Universal Site Services, Inc. was chosen as the recommended provider based on a scoring and evaluation process that included consideration of company history, qualifications, environmental practices, and pricing.

Approval of this Agreement with Universal Site Services, Inc. will provide routine maintenance services and allow for non-routine/on-call services with a maximum annual amount of \$29,000 in years 1-3 (Fiscal Years 2022 - 2024) and a maximum annual amount of \$31,240 in the optional additional years 4-5 (Fiscal Years 2025 and 2026).

NAPA COUNTY AGREEMENT NO. 220154B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2021, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY”, and UNIVERSAL SITE SERVICES, INC., a California corporation, whose business address is 760 Capitol Ave., Milpitas, CA 95035, hereinafter referred to as “CONTRACTOR”;

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, in order to provide routine bi-monthly vehicle power sweeping maintenance for the COUNTY’S Fifth Street Parking Garage and as needed on-call services for Napa County Airport and other COUNTY owned parking facilities; 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, 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 (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 services described in the RFP 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 rates set forth in Exhibit "B", 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 SIX THOUSAND DOLLARS (\$6,000) for routine professional services and TWENTY THREE THOUSAND DOLLARS (\$23,000) for non-routine professional services per fiscal year in years 1-3 and a total of SIX THOUSAND, TWO HUNDRED AND FORTY DOLLARS (\$6,240) for routine professional services and TWENTY FIVE THOUSAND DOLLARS (\$25,000) for non-routine professional services per fiscal year in years 4-5; 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 fifteen (15) calendar days to the PUBLIC WORKS 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 PUBLIC WORKS ADMINISTRATIVE MANAGER 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.** [RESERVED]

(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 DEPARTMENT OF PUBLIC WORKS 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 (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 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

Napa County Department of Public Works
1195 Third Street, Suite 101
Napa, CA 94559

CONTRACTOR

Universal Site Services, Inc.
760 Capitol Avenue
Milpitas, CA 95035

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 DIRECTOR OF PUBLIC WORKS. 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 of 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.

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 DIRECTOR OF PUBLIC WORKS.

(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.**

(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 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.

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]

29. Electronic Signatures. This Agreement may be executed by electronic signature(s) and transmitted in a portable document format ("PDF") version by email and such electronic signature(s) shall be deemed original for purposes of this Agreement and shall have the same force and effect as a manually executed original.

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

UNIVERSAL SITE SERVICES, INC.

By 
GINA VELLA, President

By 
JOE VELLA, Vice President

"CONTRACTOR"

NAPA COUNTY, a political subdivision of
the State of California

By _____
ALFREDO PEDROZA, Chair
Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Jason M. Dooley</u> Deputy County Counsel</p> <p>Date: <u>October 1, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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EXHIBIT "A"

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following vehicle power sweeping services.

DESCRIPTION OF SERVICES

1. Routine Maintenance at Fifth Street Parking Garage (Bi-Monthly):

CONTRACTOR shall provide COUNTY with vehicle power sweeping maintenance of all areas of the COUNTY'S Fifth Street Parking Garage on a twice monthly basis. Service will include:

- Power vacuum sweeping of all parking areas.
- Hand blowing debris from all areas where the sweeper vehicle is unable to reach including all corners and stairwells.
- Regular follow-up inspections from sales person or field service person.
- Notification of any unusual circumstances (i.e. excessive water, broken sprinkler head, lighting issues or large abandoned objects).
- Coordinate day and time of bi-monthly maintenance with COUNTY'S Director of Public Works or designee.

2. On-Call Services:

A. Napa County Airport

CONTRACTOR shall provide COUNTY with on-call street sweeping services within certain portions of the Napa County Airport identified in Figure "A-1" as requested by the COUNTY's Airport Manager or designee.

- Services for Runways shall be for the full length and width of surface, as identified in Figure "A-2". All other pavement areas requested will be on a per hour basis.
- Should equipment allow, all waste and debris generated within the Napa County Airport will be deposited in the designated dumpsters on airport property.
- Contractor to provide services within 4 hours of request by Airport Manager or designee.
- All Contractor Employees who perform street sweeping services within the Napa County Airport shall be required to have basic Airport Operations Training provided by Airport staff.

B. County Owned Parking Facilities

CONTRACTOR shall provide the COUNTY with authorized on-call parking facility sweeping and cleaning services as requested by the COUNTY'S Director of Public Works or designee.

Reports and Deliverables

Ensure that any reports, and any deliverable to the County be delivered in a manner to ensure non-discrimination and equal access to County services and digital properties such as websites,

documents, and applications by persons with a disability under the Americans with Disabilities Act (ADA) and under Section 508 of the Rehabilitation Act of 1973. Successful respondent shall ensure that any deliverable, including but not limited to, reports, documents, videos, multimedia productions, live broadcasts and any and all other web content and information communications technology are fully accessible and in compliance with federal accessibility standards and laws and with the COUNTY's Web Content Accessibility Standards. Examples of accessibility measures include, but are not limited to, providing closed captions, video descriptions, and 508 compliant players.

FIGURE "A-1"
MAP OF NAPA COUNTY AIRPORT



FIGURE "A-2"**NAPA COUNTY AIRPORT RUNWAY MEASUREMENTS**

EXHIBIT "B"
COMPENSATION

Years 1-3

SERVICE	FREQUENCY	MONTHLY TOTAL	TOTAL ANNUAL COST
Fifth Street Parking Garage	2X / Month	\$500.00	\$6,000.00

Authorized on-call vehicle power sweeping and cleaning services shall be at the rates below:

Classification/Title	Regular Hourly Rate	Overtime Hourly Rate	Double Time Hourly Rate
Parking Lot Vacuum Truck & Operator	\$65.00	\$80.00	\$95.00
Industrial Construction Sweeper & Operator	\$135.00	\$150.00	\$165.00

Regular Hours: An 8-hour shift. On site work for non-exempt employees are entitled to one unpaid 30-minute meal break, and two paid 10-minute rest breaks. Employees must receive their off-duty meal breaks before the end of the fifth hour of work.

Overtime Hours: After 8 hours per day or 40 hours per week.

Double Time Hours: After 12 hours per day, 48 hour per week and on COUNTY recognized holidays.

Payment of California Prevailing Wage is required.

COUNTY shall pay contractor an hourly rate for street sweeping services within Napa County Airport except for on-call runway surfaces.

Authorized on-call Airport runway surfaces to be paid per runway length and width as identified in the chart below:

RUNWAY	LENGTH	WIDTH	RATE
1L-19R	5,931'	150'	\$900.00
1R-19L	2,510'	75'	\$300.00
6-24	5,007'	150'	\$750.00

* Not to exceed four (4) service visits for Airport runways.

Per trip charge for on-call services: \$270.00

Department of Industrial Relations (DIR) Registration Number: 1000041648

Years 4-5

SERVICE	FREQUENCY	MONTHLY TOTAL	TOTAL ANNUAL COST
Fifth Street Parking Garage	2X / Month	\$520.00	\$6,240.00

Authorized on-call vehicle power sweeping and cleaning services shall be at the rates below:

Classification/Title	Regular Hourly Rate	Overtime Hourly Rate	Double Time Hourly Rate
Parking Lot Vacuum Truck & Operator	\$67.70	\$83.35	\$98.95
Industrial Construction Sweeper & Operator	\$140.60	\$156.25	\$171.85

Regular Hours: An 8-hour shift. On site work for non-exempt employees are entitled to one unpaid 30-minute meal break, and two paid 10-minute rest breaks. Employees must receive their off-duty meal breaks before the end of the fifth hour of work.

Overtime Hours: After 8 hours per day or 40 hours per week.

Double Time Hours: After 12 hours per day, 48 hour per week and on County recognized holidays.

Payment of California Prevailing Wage is required.

COUNTY shall pay contractor an hourly rate for street sweeping services within Napa County Airport except for on-call runway surfaces.

Authorized on-call Airport runway surfaces to be paid per runway length and width as identified in the chart below:

RUNWAY	LENGTH	WIDTH	RATE
1L-19R	5,931'	150'	\$937.50
1R-19L	2,510'	75'	\$312.50
6-24	5,007'	150'	\$781.25

* Not to exceed four (4) service visits for Airport runways.

Per trip charge for on-call services: \$281.25

Department of Industrial Relations (DIR) Registration Number: 1000041648

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	Site visit/investigation 123 Main St, Napa. Conf w/Owner AutoCad, Bldg X, 3 rd Floor	Smith, Engineer	1.5	\$165.00	247.50
1/1/15		Smith, Engineer	1	\$165.00	165.00
1/1/15		Smith, Engineer	4	\$165.00	660.00
		Engineer			
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	\$195.00	341.25
1/2/15	AutoCad Bldg X, 3 rd Floor Conf w/Owner re 2 nd Floor	Smith, Engineer	4	\$165.00	660.00
1/2/15		Smith, Engineer	.5	\$165.00	82.50
1/3/15	Mtg w/Jones re 2 nd Floor; conf w/Owner Mtg w/Smith; conf w/Owner re 2 nd Floor	Smith, Engineer	1.5	\$165.00	247.50
1/3/15		Jones, PE	1.5	\$195.00	292.50
TOTAL					



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-957

TO: Board of Supervisors
FROM: Steven Lederer, Director of Public Works
REPORT BY: Katherine Bales, Assistant Airport Manager
SUBJECT: Amendment No. 1 to Napa County Agreement No. 180269B with REACH Air Medical Services, LLC

RECOMMENDATION

Director of Public Works requests approval of and authorization for the Chair to sign Amendment No. 1 to Agreement No. 180269B with REACH Air Medical Services, LLC at no cost to the County to facilitate the installation of an automatic backup generator at 1950 Airport Road in order to provide essential medical services.

EXECUTIVE SUMMARY

Amendment No. 1 to Napa County Agreement No. 180269B authorizes REACH Air Medical Services, LLC., (REACH) to install an automatic backup generator at 1950 Airport Road where they base aircraft and personnel in order provide essential medical services. The generator will provide electrical power to the facility when normal electrical service is lost, allowing REACH's operations to continue uninterrupted. All costs associated with the purchase, permitting, installation, maintenance, and use of the generator will be paid by REACH.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	No
Where is it budgeted?	All costs associated with the permitting, installation, maintenance, and use of the generator will be borne by REACH.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Tenant Improvement desired by Lessee at no cost to the County.
Is the general fund affected?	No
Future fiscal impact:	None
Consequences if not approved:	REACH will continue to use smaller manual generators that are unable to power the entire facility which can result in impacts to REACH's normal operations.
County Strategic Plan pillar addressed:	Effective and Open Government; Collaborative and Engaged

Community

ENVIRONMENTAL IMPACT

Consideration and possible adoption of a Categorical Exemption Class 3: It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. The project will not impact an environmental resource of hazardous or critical concern, has no cumulative impact, there is no reasonable possibility that the activity may have a significant effect on the environment due to unusual circumstances, will not result in damage to scenic resources, is not located on a list of hazardous waste sites, cause substantial adverse change in the significance of a historical resource or extract groundwater in excess of the Phase 1 groundwater extraction standards as set by the Department of Public Works. [See Class 3 (“New Construction or Conversion of Small Structures”) which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15303; see also Napa County’s Local Procedures for Implementing the California Environmental Quality Act, Appendix B.]

BACKGROUND AND DISCUSSION

In February 2018, the County entered into Agreement No. 180269B with REACH Air Medical Services, LLC., (REACH) to lease the hangar and office facility located at 1950 Airport Road. This 17,000 square foot facility consists of hangar space, maintenance shop, crew rest areas, and administrative offices for helicopter crews. Since leasing and establishing the Napa REACH 3 Helicopter Base at the Napa County Airport, REACH has made substantial improvements to the facility in order to accommodate and improve their operations.

Amendment No.1 to Agreement No. 180269B will allow REACH to install an automatic backup generator to provide electrical backup power to the facility. All costs associated with the generator, including permitting, installation, maintenance, and use will be paid by REACH.

The REACH 3 air operations unit specializes in neonatal care and is vital to the local hospitals, being one of the few emergency evacuation vehicles for critical patients. Uninterrupted power is critical to REACH’s mission, thus the installation of the proposed generator is essential given the propensity of power failures, including PG&E’s planned Public Safety Power Shutoffs (PSPSs). Without backup generator power, it is difficult for REACH to maintain their normal operations.

Aside from the requested amendment to allow for the placement of a backup generator at 1950 Airport Road, all other terms and conditions of Agreement No. 180269B remain in full force and effect.

SUPPORTING DOCUMENTS

**AMENDMENT NO. 1 OF
NAPA COUNTY AGREEMENT NO. 180269**

THIS AMENDMENT NO. 1 OF NAPA COUNTY AGREEMENT NO. 180269 is made and entered into as of this _____ day of _____, 2021, by and between the NAPA COUNTY, a political subdivision of the State of California ("Lessor" or "County") and REACH AIR MEDICAL SERVICES, LLC, a California Limited Liability Company, whose business address is 6363 Fiddler's Green Circle, 14th Floor Greenwood Village, CO 80111, hereinafter referred to as "Lessee";

RECITALS

WHEREAS, on February 27, 2018, the Napa County Board of Supervisors approved Agreement No. 180269, also referred to as Napa County Agreement 180269B, ("Lease Agreement") with Lessee to lease approximately 11,600 square feet of space within 1950 Airport Road, for use as administrative offices, crew rest facilities, and indoor storage of aircraft; and

WHEREAS, Lessee provides essential services dependent on electrical power and power outages can adversely affect their core operations; and

WHEREAS, the Lessee desires to install a generator to power 1950 Airport Road during power outages;

NOW, THEREFORE, the Agreement is amended as follows:

1. Paragraph 17 of the Agreement is amended in its entirety to include the new improvements provided for in the recitals to this Amendment No. 1 as follows:

17. Tenant Improvements to be Performed by Lessee. Lessee has indicated the desire to make the following improvements. All costs associated with such improvements shall be borne by Lessee.

- Construction of a break area consisting of sink, counter, areas for refrigerator and dishwasher.
- Add laundry hook ups for clothes washer and dryer.
- Install Bathroom/Shower facilities
- Install AT&T fiber data line from utility pole located on Airport Rd. to the Premises per the Exhibit C (Exhibit C should be considered schematic in nature only and is not approved for construction). Costs associated with this improvements shall include engineering, construction, and work associated with the drafting and recording of utility easements.
- To facilitate its ongoing critical operations during power outages, Lessee shall have a non-exclusive right to place, maintain, and use a generator and related electrical lines at that location immediately south of its leasehold as shown in Exhibit E, attached hereto and incorporated by reference herein. Lessee shall comply with all regulations applicable to the installation,

operation of the generator, and pay for all costs associated with the installation, maintenance, and use of the generator. Power supplied by the generator will be for the benefit of 1950 Airport Road in its entirety and used by all building occupants, tenants, and/or the County. Upon termination or expiration of the Facility Lease Agreement, the generator and related electrical lines may become the property of the Napa County Airport if mutually agreed to by Lessee and County, acting by and through the Airport Manager. If no such agreement is reached, the Lessee shall, at its own expense, be required to remove the generator and any related improvements as directed by the Airport Manager.

All those improvements set forth above and as well as many future improvements Lessee desires to make to the Leased Premises must be approved by the Public Works Department prior to work commencing. Tenant shall provide plans and specifications for review.

2. Paragraph 38 of the Agreement is amended in its entirety as set forth below:

38. Notices.

All notices which any party to this Lease Agreement is required or desires to give to any other party in connection with this Lease Agreement shall be in writing and shall be served by personal delivery during usual business hours at the principal address or office of the other party, to an officer or person apparently in charge of that office, or by depositing the same in the United States mail, postage prepaid, and addressed to the other party at its principal address or office, or to such other address as that party may designate from time to time by written notice given to the other party in the manner specified in this Paragraph. Service of notice pursuant to this Paragraph shall be deemed complete on the day of service by personal delivery or 48 hours after mailing if deposited in the United States mail. Until changed by written notice to the other party, notices shall be delivered to the following addresses:

Lessor
Airport Manager
2030 Airport Road
Napa, CA 94558

Lessee
Corporate Headquarters
REACH Air Medical Services
6363 Fiddler's Green Circle, 14th Floor
Greenwood Village, CO 80111

3. 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.
4. Except as provided in Paragraphs 1, 2, and 3 above, the terms and conditions of the Agreement shall remain in full force and effect as originally approved.

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IN WITNESS WHEREOF, this Amendment No. 1 of Napa County Agreement No. 180269 was executed by the parties hereto as of the date first above written.

REACH AIR MEDICAL SERVICES, LLC.

By  9/20/2021
SEAN RUSSELL, Regional President

"LESSEE"

NAPA COUNTY, a political subdivision of
the State of California

By _____
ALFREDO PEDROZA, Chair
Napa County Board of Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas S. Capriola</u> Deputy County Counsel</p> <p>Date: <u>September 1, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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1950 Airport Road

Generator

EXISTING PLANT FOOTPRINT
PROJECT REQUIREMENTS

NEW GENERATOR COORDINATE
AND/OR OTHER MAJOR
STRUCTURAL
REQUIREMENTS

PROVIDE AND INSTALL
CONCRETE PAD FOR
GENERATOR AND/OR
OTHER MAJOR
STRUCTURAL
REQUIREMENTS

GRAB, BUILT, TEST, TOLERANCE
AND/OR OTHER MAJOR
STRUCTURAL
REQUIREMENTS

PROVIDES EXPANSION
IDENTICAL TRANSITION TO
TYPICAL BOTTLENECK
STRUCTURE



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-958

TO: Board of Supervisors
FROM: Steven Lederer - Director of Public Works
REPORT BY: Andrea Salter - Staff Services Analyst I
SUBJECT: Amendment No. 4 to Professional Services Agreement 170267B with Siemens Industry, Inc.

RECOMMENDATION

Director of Public Works requests the following related to upgrading the HVAC management system for County facilities:

1. Approval of a Budget Transfer increasing appropriations in the capital asset account by \$246,868 in the Property Management budget (Fund 4300, Org 4300000) with offsetting use of its available fund balance and establishment of a capital asset in the amount of \$246,868 for the purchase of software and select field panel hardware necessary to upgrade the Siemens HVAC Management and Control System (4/5 vote required); and
2. Authorization for the Chair to sign Amendment No. 4 to Agreement No. 170267B with Siemens Industry, Inc. to increase compensation by \$246,868 (with a new maximum compensation of \$509,363 for the term June 1, 2018 through June 30, 2023) and to update the Scope of Work to upgrade the Siemens Control System software and replace selected field panel hardware.

EXECUTIVE SUMMARY

Siemens Industry, Inc. (Siemens) provides regular and non-routine maintenance and repairs to Siemens proprietary computer control systems for Heating, Air Conditioning and Ventilation (HVAC) systems within South Campus Building B, Hall of Justice, Administration, Sheriff, Juvenile Justice, 1127 First Street, 650 Imperial, and the Re-entry Facility. They have been providing services since the HVAC systems were installed at the facilities and are currently providing services under Agreement No. 170267B, which has been in place since May 8, 2018. The existing computer control management system has reached its end-of-life and is no longer supported by Siemens or by our internal ITS department. An upgrade of the management system is

needed at this time for efficient and effective management of HVAC systems at several County facilities.

Approval of the requested actions will establish a capital asset for the upgraded Siemens Control System, approve a budget transfer, and amend the existing sole-source agreement with Siemens to allow for a significant upgrade to the Siemens Control System, which has been in place since 1998.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	Funds will come from Property Management fund balance (Fund 4300, Org 4300000), which is estimated to be \$2.5M.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	To ensure for the continued safe and consistent operation of HVAC control systems in County owned buildings.
Is the general fund affected?	No
Future fiscal impact:	Future maintenance costs of maintaining upgrades will be budgeted in future fiscal years.
Consequences if not approved:	The County will be unable to obtain optimum performance from its HVAC units at several County facilities and will be unable to request immediate repair to the control systems if faced with a failure.
County Strategic Plan pillar addressed:	Effective and Open Government

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is a project that does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. in accordance with the California Environmental Quality Act at 14 CCR §15301.

BACKGROUND AND DISCUSSION

Siemens Industry, Inc. (formerly Siemens Building Technologies, Inc.) provides specialized services relating to technical support for the Heating, Ventilation and Air Conditioning (HVAC) control equipment located in multiple County owned facilities under Agreement No. 170267B with a term July 1, 2018 through June 30, 2023. Maximum compensation for these technical services is \$262,495.

The current building automation system has been in existence since 1998 and is nearing its end of life. Siemens no longer provides updates to the existing software system and the County ITS division no longer supports the computer system that runs the Siemens HVAC management software. The proposed amendment will upgrade the Siemens building automation system, making it more reliable and easier to manage. Siemens is a proprietary management system, therefore Amendment No. 4 is an extension of a sole-source award agreement.

Approval of the requested actions will approve a budget transfer for Property Management, establish a capital asset for the upgraded HVAC management system, and approve Amendment No. 4 to Agreement 170267B, which will allow for migration of the existing HVAC management system to a new upgraded system, including new software and hardware for select sites where needed, at a cost of \$246,868.

**NAPA COUNTY AGREEMENT NO. 170267B
AMENDMENT NO. 4**

PROFESSIONAL SERVICES AGREEMENT

THIS AMENDMENT NO. 4 OF NAPA COUNTY AGREEMENT NO. 170267B made and entered into as of this 23rd day of September, 2021 by and between the COUNTY OF NAPA, a political subdivision of the STATE OF CALIFORNIA, hereinafter referred to as "COUNTY", and SIEMENS INDUSTRY, INC., (formerly Siemens Building Technologies) a Delaware corporation, whose mailing address is 100 Technology Drive, Alpharetta, GA 30005, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, by Napa County Agreement No. 7992 (now 170267B) entered into as of July 1, 2013, and (hereafter referred to as "Agreement"), CONTRACTOR agreed to provide specialized technical support for the Siemens/Staefa Control System in various County Owned Buildings; and

WHEREAS, on April 22, 2014, COUNTY and CONTRACTOR entered into Amendment No. 1 to the Agreement increasing the maximum amount by \$15,000 annually to allow for future additional work in accordance with the Agreement; and

WHEREAS, on May 8, 2018, COUNTY and CONTRACTOR entered into Amendment No. 2 to the Agreement extending the term of the agreement through June 30, 2023, and to update the Scope of Work and annual maximum cost; and

WHEREAS, on June 23, 2020, COUNTY and CONTRACTOR entered into Amendment No. 3 to the Agreement to update the Scope of Work to include the Re-Entry Facility and to update maximum annual compensation; and

WHEREAS, COUNTY and CONTRACTOR wish to enter into Amendment No. 4 to the Agreement to amend the Scope of Work to upgrade the Siemens Control System from a system that has been in place since 1998 to the new Siemens Desigo System and replace select field panel hardware and to increase maximum compensation to perform such work.

TERMS

NOW, THEREFORE, the Agreement is amended as follows:

1. Exhibit "A-3" is added to the Agreement as additional scope of work.
2. Paragraph 3 of the Agreement is amended to read in full as follows:
3. **Compensation.**
 - (a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR the following annual amounts for routine services:

<u>Year #</u>	<u>Period</u>	<u>Annual Total</u>	<u>Payment Frequency</u>
Year 1	07/01/2018 to 06/30/2019	\$34,640 annually	paid \$8,660 quarterly
Year 2	07/01/2019 to 06/30/2020	\$35,680 annually	paid \$8,920 quarterly
Year 3	07/01/2020 to 06/30/2021	\$37,910 annually	paid \$9,477 quarterly
Year 4	07/01/2021 to 06/30/2022	\$39,047 annually	paid \$9,762 quarterly
Year 5	07/01/2022 to 06/30/2023	\$40,218 annually	paid \$10,055 quarterly

Consistent with Exhibit "A-2", any additional services not described within the scope of work shall be incurred only upon the request of the Director of Public Works or his designee and shall be billed at the rates set forth in Exhibit "A-2". Any increases to the rates set forth in Exhibit "A-2" on or after December 31, 2020 shall require prior written approval by the Director of Public Works or his designee. In addition, COUNTY shall pay CONTRACTOR a total of \$246,868.00 for the work described in Exhibit "A-3," which shall be paid in progress payments, as described in Exhibit "A-3."

(b) Expenses. Expenses will be reimbursed by COUNTY upon submission of an invoice in accordance with Paragraphs 4 and with the provisions set forth in Exhibit "A-2." The rate for the work set forth in Exhibit "A-3" includes any expenses and no additional expenses shall be reimbursed by COUNTY.

(c) Maximum Amount for Exhibit A-2. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement related to Exhibit A-2 shall be as follows; 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:

Year 1	7/01/2018 to 6/30/2019	\$49,640 annually
Year 2	7/01/2019 to 6/30/2020	\$50,680 annually
Year 3	7/01/2020 to 6/30/2021	\$52,910 annually
Year 4	7/01/2021 to 6/30/2022	\$54,047 annually
Year 5	7/01/2022 to 6/30/2023	\$55,218 annually

(d) Maximum Amount for Exhibit A-3. Notwithstanding subparagraphs (a), (b) and (c), the maximum payment under this Agreement related to Exhibit A-3, regardless of whether the work occurs within one or more fiscal years, shall be TWO HUNDRED FORTY SIX THOUSAND, EIGHT HUNDRED AND SIXTY EIGHT DOLLARS (\$246,868.00); provided however, that such sums shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

3. This Amendment No. 4 shall be effective as of the date first written above.

4. Except as provided in 1, 2 and 3 above, the terms and provisions of the Agreement shall remain in full force as effect as last amended.

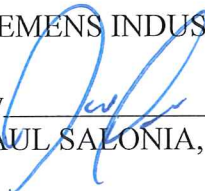
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IN WITNESS WHEREOF, this Agreement is executed by the duly-authorized representative of the parties hereto as of the date first above written.

SIEMENS INDUSTRY, INC.

By  Josh Fosson - Branch Manager
PAUL SALONIA, Branch Sales Manager

"CONTRACTOR"

COUNTY OF NAPA, a political subdivision of
the State of California

By _____
ALFREDO PEDROZA, Chair of the Board of
Supervisors

"COUNTY"

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Jason M. Dooley</u> Deputy County Counsel</p> <p>Date: <u>September 13, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors</p> <p>By: _____</p>
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PROPOSAL

Napa County Migration

PREPARED BY

Siemens Industry, Inc.

PREPARED FOR

COUNTY OF NAPA

DELIVERED ON

February 21, 2020



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Contact Information

Proposal #:	4528586
Date:	February 21, 2020

Sales Executive:	Christopher M Saia
Branch Address:	2969 Prospect Park Dr Suite 100 California, 95670
Telephone:	916.849.7799
Email Address:	chris.saia@siemens.com

Customer Contact:	Napa County
Customer:	COUNTY OF NAPA
Address:	1195 3RD ST NAPA CA 94559-3048

Services shall be provided at:	Various Locations in Napa County
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Executive Summary



Siemens is pleased to provide the following proposal to migrate Napa County to the new Desigo CC Workstation. The Insight workstation, which has been an integral component of the county's Apogee building automation system, has been in existence since 1998 and is nearing its end of life. Our new workstation, Desigo CC has been designed and developed based upon customer demands for easier to use, smarter, more robust, adaptable and open systems. We are pleased to be providing this proposal to upgrade your facility to this innovative and powerful new system.

True to our tradition of Forward and Backward compatibility, our upgrade solution will utilize much of your existing Apogee infrastructure, thus minimizing downtime and unnecessary capital expense. Our *Fast Forward* migration strategy leverages much of your current Apogee system hardware, eliminating the need to replace field end devices or wiring. As shown in the scope details below, we will also be updating select field panel hardware and/or firmware utilizing our *Fast Forward* methodology. The *Fast Forward* strategy allows us to provide you with a cost effective and efficient means to upgrade your system.



Once you've migrated to Desigo CC, you will be utilizing our state-of-the-art building automation system. As a result, you'll be well positioned to incorporate the latest technologies and products developed by Siemens.

Advantages of Desigo CC

Desigo CC brings your existing APOGEE System into the digital age with a modern integration platform ready to meet your changing needs.



Open Development Platform

Extend the functionality of your system and freely exchange your valuable data with external applications



Cloud Ready

Modern web service interfaces let your building system take part in the Internet of Things (IoT)



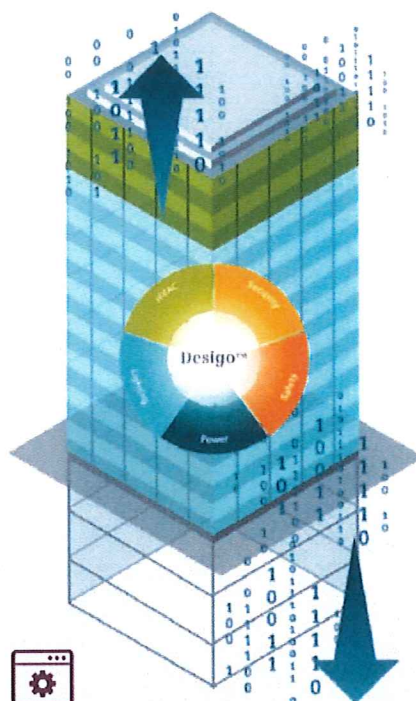
KPI Dashboard

Customized views enable smarter, more efficient control strategies



Backward Compatible

The full range of field panel controllers are supported continuing the strong legacy of backwards compatibility and investment protection provided by the APOGEE System



Latest IT Standards

Support for newest operating systems, current IT environments, latest UI trends



Mobile Accessibility

Enables operators on-the-go to monitor and control facilities remotely



Cyber Safety Monitoring

Continuously monitored and updated to address cyber security threats and tested on current virus protection software



Multi-Discipline

Monitor all of your building systems from a common interface, and make your fully integrated facility into a truly smart building

Desigo CC offers total system visualization:



As shown below Siemens has taken the feedback from many customers and system users and, as a result, developed a workstation that is easy to use, smart, adaptable, open and robust.

1 Easy	Easy to learn, easy to use <ul style="list-style-type: none"> ▪ Well defined user-based workflows ▪ Anticipates your next step
2 Smart	Faster, better decision making <ul style="list-style-type: none"> ▪ Fast response to critical events ▪ Time-shifted Trend comparison
3 Adaptable	Personalized for your facility and for your users <ul style="list-style-type: none"> ▪ Browser or installed client ▪ Personalized system views
4 Open	An open integrated system <ul style="list-style-type: none"> ▪ Designed for Building Automation, Fire Safety, and Security ▪ Standard control system protocols like BACnet, OPC, Modbus ▪ IT standards like SNMP, SQL, HTTP
5 Robust	Solid Platform for Now and for the Future <ul style="list-style-type: none"> ▪ Built on proven SCADA system technology ▪ Used in large mission critical installations ▪ Extensible for future expansion

Additional information regarding the features and benefits of the Desigo CC Workstation is readily available. Please speak with your Siemens Account professional regarding any additional information required to better understand this product.

Benefits of a Migration Strategy

Siemens Building Technologies has a roadmap to *Fast Forward* your system to the latest platform. The migration modernizes your building automation system, giving it enhanced functionality and flexibility. Your existing control components are updated to fully integrate to the Desigo CC Workstation. By reusing your existing field panel enclosures, wiring, sensors and actuators, we reduce wiring complexity, minimize downtime, and control migration costs.

Your initial investment in the Siemens automation system many years ago now provides a strong foundation for the future. The *Fast Forward* program allows you to migrate at much lower costs by retaining as much of your existing investment as possible. As the chart below indicates, replacing your old hardware with a new system requires significant additional investments in programming, point databases, hardware, and commissioning. System replacement also requires more of the limited wall space in your mechanical or electrical room, and extended downtime at switchover.

The *Fast Forward* program has been engineered to be cost-effective and minimize the impact to your facilities and occupants.

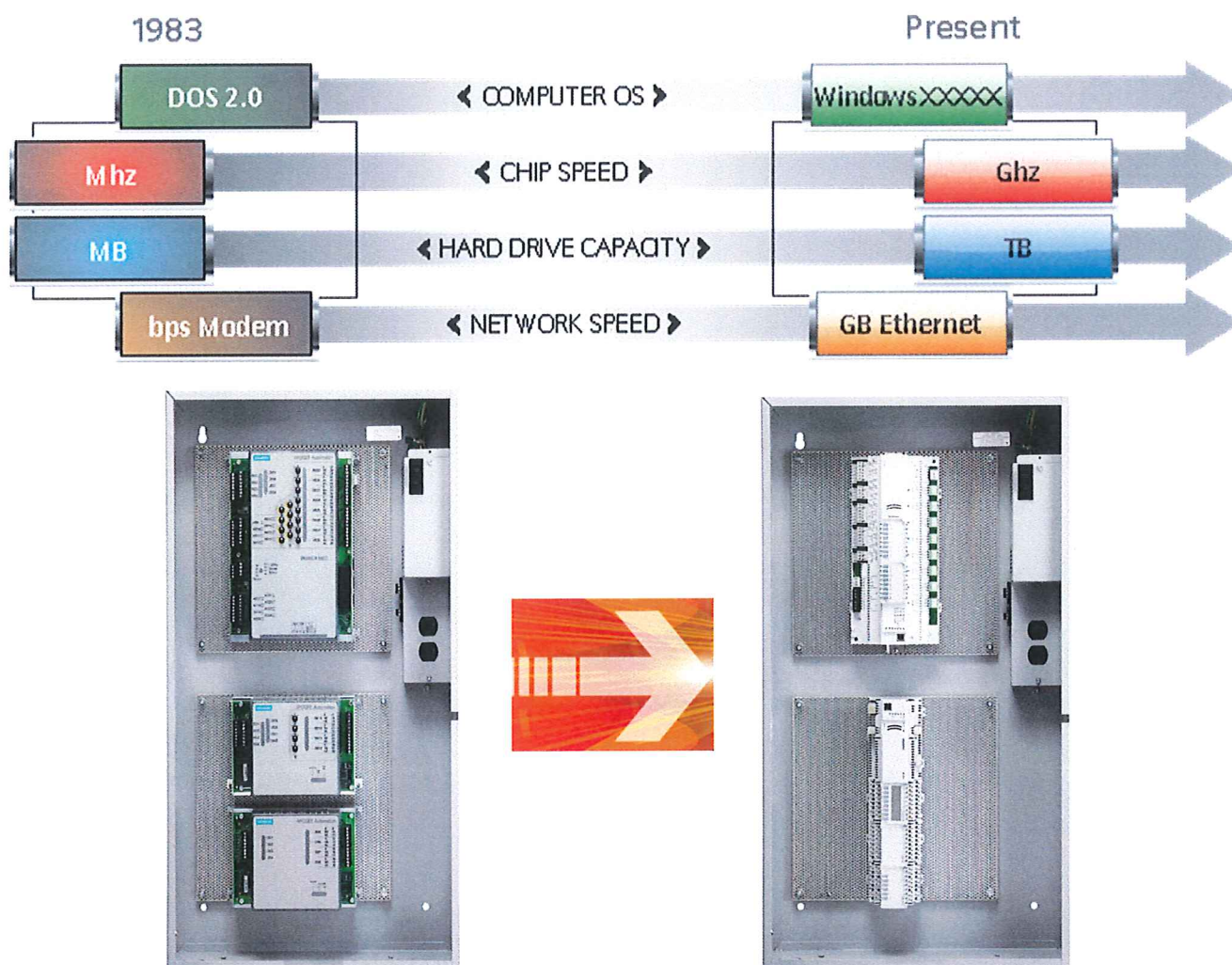
	New Installation	<i>Fast Forward</i>
System Engineering Cost	\$	
Electrical Installation	\$	
Field Panel Hardware	\$\$	\$
Field Devices	\$\$	
Field Wiring	\$\$	
Programming	\$\$	\$
Workstation Hardware / Software	\$\$	\$\$
Graphical Interface	\$	
Create New Point Database	\$\$	
Tools to Convert Database		\$
System Commissioning	\$	\$
Operator Training	\$	\$
System Startup	\$\$	\$
Extended System Downtime	\$	
Facility Operation Impact	\$	
System Replacement Cost	\$\$\$	
Migration Cost		\$

As your business partner, Siemens is backing our commitment to help you stay current with new technology by extending the value from your past system investments. This migration strategy allows you to leverage your past investments in engineering, programming, training, hardware and software.

Prepare for the Future

Certain Napa County Facilities still use the Modular Equipment Controller (MEC) which has been part of the Siemens Building Technologies, Inc. ("Siemens") product offering since 1991. The Siemens MEC is a prime example of our commitment to protecting your past investments, but the time that has elapsed since the introduction of the MEC is an eternity in the semiconductor and electronics industries. While you've had to replace other assets in your facility to keep up with changing technology, the always-reliable MEC remained. However, components essential to the continued manufacturing of the MEC are simply no longer being made.

True to our commitment to help you stay current with new technology by extending the value from past system investments, Siemens has a migration plan to *Fast Forward* your MEC to state-of-the-art hardware platforms. The *Fast Forward* program leverages your past investments in engineering, programming, training, hardware and software.

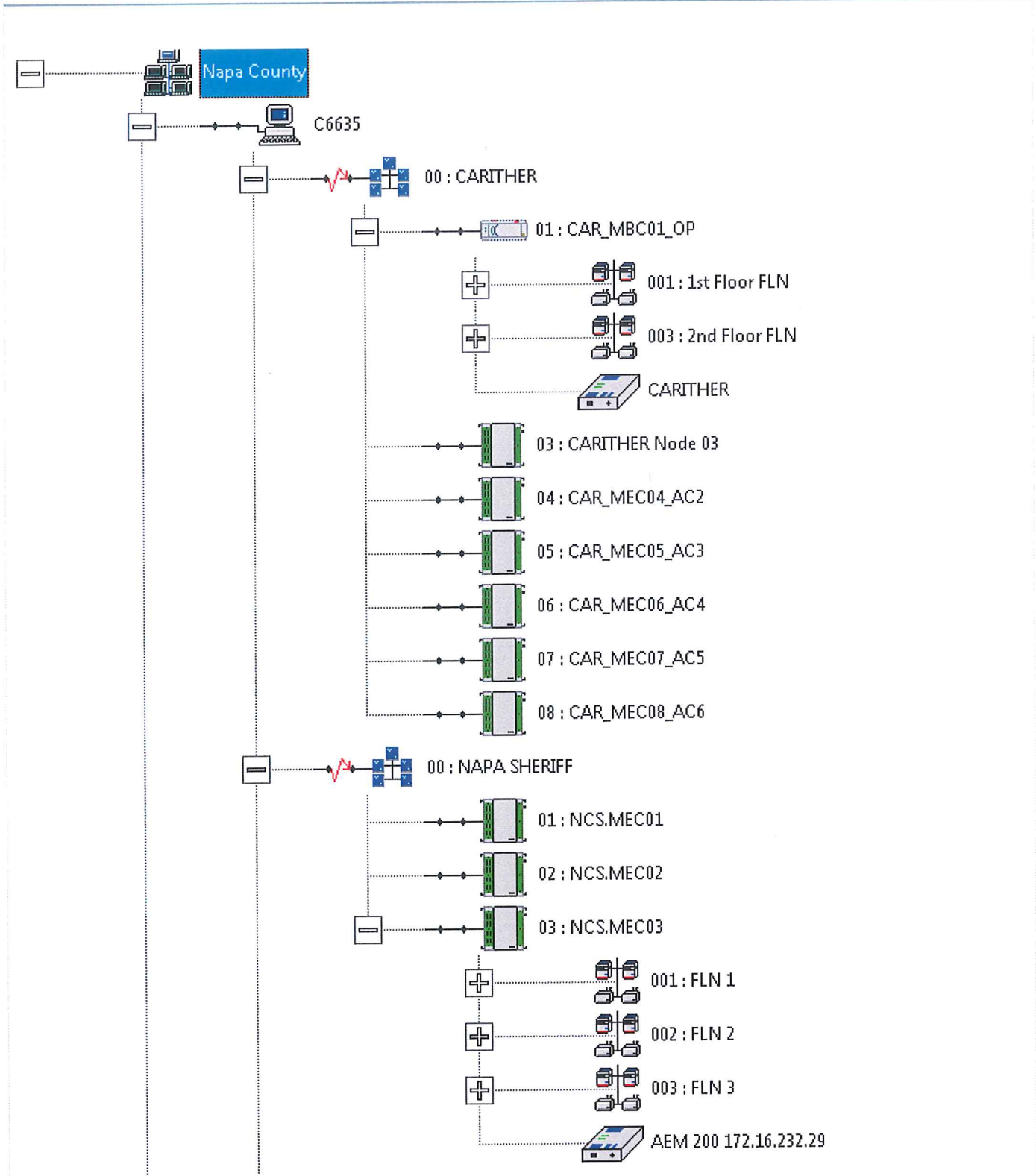


Now is the time to *Fast Forward*. With our *Fast Forward* Migration program you'll have less downtime, fewer disruptions to your facilities and your customers, and you'll be confident you're maximizing the benefits of new technology with limited system investment.

Project Scope of Work

Insight to Desigo CC Migration:

Desigo CC Software & Licensing	QTY
Desigo CC software installed on Virtual Machine	1
Insight databases migrated to Desigo CC	1
Client Licenses	5
Building Automation Point Licenses	2100
Licensing for Flex Client on-the-go operator access	Included
P2 Driver	Included



Workstation – Database Customization	QTY
Field panel networks connected to Designo CC	9

Field panel controllers connected to Desigo CC	36
FLN devices connected to Desigo CC	265
Physical IO points added to Desigo CC	970
Virtual points added to Desigo CC	11959
User accounts migrated to Desigo CC	All
Points naming conventions updated and added to Desigo CC	All
Points renamed from Carither to 1127 First St.	All Carither
Trend views migrated to Desigo CC	All
Custom reports migrated to Desigo CC	59

Graphics	QTY
Graphics updated for Desigo CC (Remove unused templates)	All Existing
Updated floor plan graphics (Carither 2nd Floor)	1

Panel Migration:

The Siemens *Fast Forward* Program for field panels will consist of the following components:

- Sixteen (9) Field Panel upgrades and three (3) Building (Area) Level Network (ALN) upgrades across the following locations:
 - **Carither**
 - ALN conversion from P2 (twisted shielded copper pair) to BACnet IP (ethernet)
 - Six (6) MEC to PXC Compact 36 Migration Kits
 - Convert VAEM Panel to BACnet IP
 - Bring all P1 devices up to Desigo CC front end.
 - **Napa Sheriff**
 - ALN conversion from P2 (twisted shielded copper pair) to BACnet IP (ethernet)
 - Two (2) MEC to PXC Compact 36 Migration Kits
 - One (1) MEC to PXC Modular Migration Kits
 - Convert VAEM to BACnet IP
 - Bring all P1 devices up to Desigo CC front end
- Complete installation of all migrated panels
- Programming and database transfer
- As-built drawings will be provided for owner's records
- Network architecture drawings will be provided for owner's records
- Proposal is based on using existing conduit and wiring and reusing existing valves, actuators, dampers and end devices.
- Provide project management, engineering, system specialist and electrical labor.
- Labor during regular business hours

Field Panel Migration	QTY
Field panels/controllers upgraded to PX platform	9
Field panels/controllers upgraded to BACnet IP protocol	9
Additional field panels/ controllers receiving firmware "flash" upgrades	13
ALN's converted to BACnet (Carither, Napa Sheriff)	2

Additional Project Elements:

Training	QTY
Onsite - Customer training hours delivered for Designo CC transition	16 Hours
Provide one off site training class for Napa County (per diem and hotel expenses will be covered by Napa) for one person.	1 Class

Designo CC Master Operator Training Path:

Introduction to Designo CC
ST 101
(Web-Based)

1.5 Hours

Designo CC Workstation I
ST 9203
(Instructor-Led)

3.0 Days

CEUs: 2.1

Designo CC Workstation II
ST 9254
(Instructor-Led)

3.5 Days

CEUs: 2.5

Designo CC Refresher (optional)
ST 501
(Virtual Instructor-Led)

1.4 Hours

CEUs: 0.4

Designo CC Master Operator
ST 9273
(Instructor-Led)

3.0 Days

CEUs: 2.1

Virtual Instructor-Led Offering (optional)
To enhance your Master Operator knowledge, we recommend completing at least one Virtual Instructor-Led (VILT) offering.

Designo CC

Take control of your professional development by completing the Designo CC Master Operator Training Path. The Designo CC Master Operator Training Path provides the critical knowledge to confidently make informed decisions when navigating through the Designo CC Management Station.

Each class in the path builds upon each other ending with a capstone scenario based training class. It is recommended that you complete the courses listed in the path in the order they are shown; from the top down. Upon successful completion of the entire path, you will receive Master Operator status.

Knowledge and skills assessments are part of the instructor-led classes to provide an opportunity for you to assess the knowledge gained during the class and prove your proficiency in operating a Designo CC Management Station.

For experienced operators, a test-out is available for the ST 9203 - Designo CC Workstation I class. The test-out is available at: www.siemens.com/esonline.

Designo CC Workstation I: ST 9203

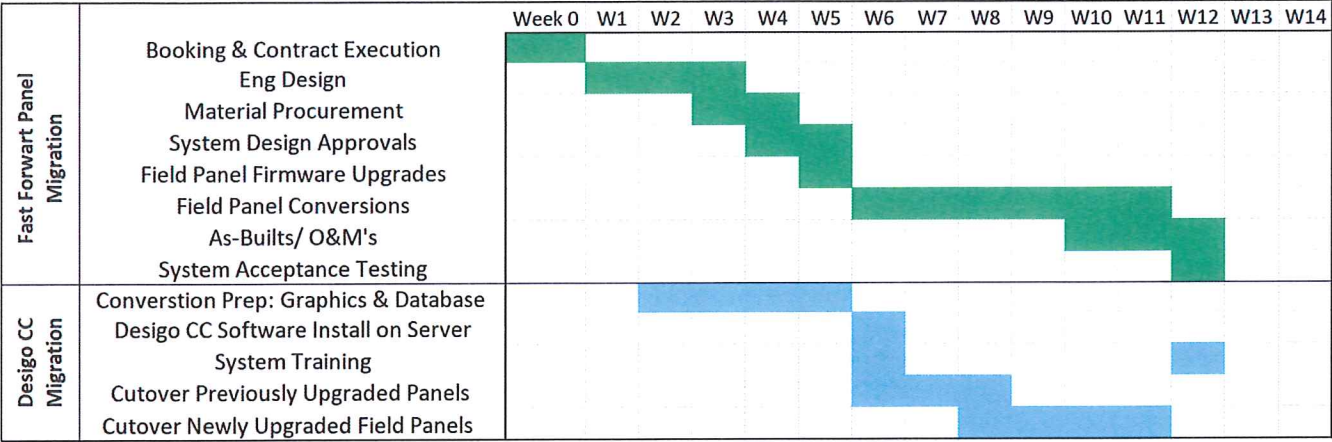
Target Audience: For users whose role is to perform day-to-day operations on a Desigo CC Management Station

Prerequisites: None

Objectives: upon completion of the course, students should be able to: Perform Event Management, Explain the workflow of Desigo CC, Navigate a Desigo CC graphic, Command and release points from a graphic, Manually collect trend data, Utilize Log Viewer to locate historical data, Run, execute, modify and save reports, Initiate Remote Notification

Topics: Navigation, Event Management, Commanding from Graphics, Trending, Scheduler, Log Viewer, Reports, Remote Notification, Knowledge Assessment, Skills Assessment.

Anticipated Project Timeline



Sell Price

Total Quote Price	\$246,868.00
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Your Project Team

Essential for the successful execution of your Fast Forward migration project are the trained building service personnel of Siemens Industry, Inc. already familiar with Napa County's building automation systems. Our implementation team of local experts provides thorough, reliable service, scheduling and migration task planning.

The following list outlines the key members of your project delivery team that will be assigned for the execution of your Fast Forward project:

Your Assigned Team of Service Professionals will include:

Chris Saia – Account Executive 916.849.7799 - chris.saia@siemens.com Manages the overall strategic migration plan based upon your current and future system requirements.

Robert Boyd – Project Manager is responsible for ensuring project execution and timeline adherence, our contractual obligations are delivered, and the county's expectations are met throughout the project

Primary System Specialist is responsible for performing field panel migrations and database conversions tasks for the project.

Kimberly Stafford - Service Coordinator is responsible for scheduling work tasks, on-site coordination meetings, and handling of any emergency situations

Zone Engineering Manager is responsible for material ordering, delivery of submittals, system architecture drawings, as-built drawings, and point database and graphical point mapping

Will Gan - Service Operations Manager is responsible for managing the delivery of your entire Fast Forward migration project and service requirements.

Assumptions/ Clarifications

It is understood that the county will provide the following

1. A virtual machine (allocated server space) adequate for Desigo CC
2. All workstation hardware upgrades (computers, monitors, printers, etc.)
3. IP drops to all panel locations in Carither and Napa Sheriff from the closest IDF/MDF room.
4. Napa County will provide AutoCAD drawings for all floor plans

Exclusions

- Overtime labor unless otherwise stated.
- Siemens is not responsible for existing equipment conditions.
- Computer Workstations (Hardware).
- IP drops and IP addresses.
- Dampers of any kind (control, back draft, louver, fire smoke, etc..)
- Duct Smoke Detectors (Furnish, Install, Power or wire, etc..)
- 120VAC Power circuits to Siemens Field Panels.
- Fiber Optic cable between buildings.
- Patching and painting.
- All gauges, thermometers and indicating devices are excluded.
- Water Meters.
- Air balancing.
- Fire/Smoke Dampers and/or Smoke Detectors (furnish, wire, power, install, etc.).
- Lighting Controls systems and hardware and integration.
- Motor Starters.
- Variable Frequency Drives (furnish, install, wire, power, program start-up, etc).
- Copper Tubing for wet differential pressure sensors is provided by the mechanical contractor.
- Smoke Control for any building.
- Performance and payment bond is NOT included.

Payment Terms

Payment Terms Acceptance Agreement

The total price of: \$246,868.00 and the estimated return on investment are based on the items outlined in this proposal. ANY statements made herein regarding savings that may be achieved by implementing the services offered in this proposal are estimates only. No warranty, either expressed or implied, shall be construed to arise from such statements, nor shall such statements be construed as constituting a guarantee by Siemens that such savings will occur if the services are implemented.

Terms and Conditions Disclaimer

The Customer acknowledges that when approved by the Customer and accepted by Siemens Industry, Inc.: (i) the Proposal and the Contract Terms and Conditions, (together with any other documents incorporated into the forgoing) shall constitute the entire agreement of the parties with respect to its subject matter (collectively, hereinafter referred to as the "Agreement") and (ii) in the event of any conflict between the terms and conditions of the Proposal and the terms and conditions of The Contract Terms and Conditions, the Contract Terms and Conditions shall control.

BY EXECUTION HEREOF, THE SIGNER CERTIFIES THAT (S)HE HAS READ ALL OF THE TERMS AND CONDITIONS AND DOCUMENTS, THAT SIEMENS OR ITS REPRESENTATIVES HAVE MADE NO AGREEMENTS OR REPRESENTATIONS EXCEPT AS SET FORTH THEREIN, AND THAT (S)HE IS DULY AUTHORIZED TO EXECUTE THE SIGNATURE PAGE ON BEHALF OF THE CUSTOMER.

This Proposal is based on the Siemens Industry, Inc. Standard Terms and Conditions and the "Scope of Work" and are to be considered part of this proposal. Proposal is valid for thirty (30) days from the delivery date of February 21, 2020. Payment is due within 30 days of invoice date.

Payment Terms: 25% mobilization in advance, progress payments

Total: \$246,868.00

Terms & Conditions Link(s)

Terms and Conditions (Click to download)

[Terms & Conditions](#)

(www.siemens.com/download?A6V10946842)

Attachment A

Riders (Click on rider below to download)

[SI Monitoring Rider](#)

(www.siemens.com/download?A6V10946171)

[SI Online Backup and Data Protection](#)

(www.siemens.com/download?A6V10946174)

[SI UBM or Utility Procurement](#)

(www.siemens.com/download?A6V10946178)

[SI Software License Warranty](#)

(www.siemens.com/download?A6V10946180)

[SI Consulting Rider](#)

(www.siemens.com/download?A6V10946838)

Signature Page

Proposed by:

Siemens Industry, Inc.

Company

Christopher M Saia

Name

4528586

Proposal #

\$246,868.00

Proposal Amount

February 21, 2020

Date

Accepted by:

COUNTY OF NAPA

Company

Name (Printed)

Signature

Title

Date

Purchase Order #



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-985

TO: Board of Supervisors

FROM: Steven Lederer - Director of Public Works

REPORT BY: Nydia Campoy - Senior Office Assistant

SUBJECT: Resolution temporarily closing portion of Berryessa Knoxville Road for Alpha Win - Napa Valley (formerly HITS Triathlon Series)

RECOMMENDATION

Director of Public Works requests adoption of a resolution temporarily closing a portion of Berryessa Knoxville Road on Saturday October 30, 2021, from 7:00 A.M. to midnight and on Sunday, October 31, 2021 from 9:00 A.M. to 2:00 P.M. for the Alpha Win - Napa Valley (formerly HITS Triathlon).

EXECUTIVE SUMMARY

The event organizer for Alpha Win - Napa Valley (formerly HITS Triathlon Series) has requested a temporary closure of a portion of Berryessa Knoxville Road on Saturday, October 30th from 7:00 A.M. to midnight and Sunday, October 31st from 9:00 A.M. to 2:00 P.M. for the Alpha Win - Napa Valley. The event organizers of Alpha Win - Napa Valley, as part of its nationwide HITS Triathlon Series, are planning five triathlon competitions consisting of swim, bike, and run segments, originating and finishing at Lake Berryessa's Chaparral Cove during the weekend of October 30th and 31th, 2021. HITS, Inc. is based in Saugerties, New York. Setup for the event will take place on Friday, October 29th, but road closure is not required for event setup. Two of the triathlon competitions will take place on Saturday, October 31st and the remaining three competitions will take place on Sunday, October 31st. Take-down will take place after the races on Sunday, October 31st. It is estimated that there will be 250 participants and spectators for Saturday's event, 450 participants and spectators on Sunday.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

County Strategic Plan pillar addressed: Collaborative and Engaged Community

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Approval of the project is a ministerial action which is exempt from CEQA (14 CCR 15268; Friends of Sierra Madre v. City of Sierra Madre (2001) 25 Cal. 4th 165).

BACKGROUND AND DISCUSSION

The event organizers of Alpha Win, as part of its nationwide HITS Triathlon Series, are planning five triathlon competitions consisting of swim, bike, and run segments, originating and finishing at Lake Berryessa's Chaparral Cove during the weekend of October 30th and 31st, 2021. HITS, Inc. is based in Saugerties, New York. Setup for the event will take place on Friday, October 29th, but road closure is not required for event setup. Two of the triathlon competitions will take place on Saturday, October 30th and the remaining three competitions will take place on Sunday, October 31st. Take-down will take place after the races on Sunday, October 31st. It is estimated that there will be 250 participants and spectators for Saturday's events, 450 participants and spectators on Sunday. There are five distances for the competition events, with the longest being held on Saturday, October 30th. The swim course for all five competitions will be staged at Chaparral Cove. The run course for all five events will take place on Berryessa-Knoxville Road. The bike course on Saturday will include Berryessa-Knoxville Road, Pope Canyon Road, Pope Valley Cross Road, and Butts Canyon Road. Sunday's bike competitions will use a course which includes Berryessa-Knoxville Road going south and turning around at 1.5, 6.2, and 12.4 miles.

Traffic control will be contracted through California Highway Patrol (CHP) and delays are expected to be minimal. CHP has requested a partial road closure for the run course on Berryessa-Knoxville Road from Chaparral Cove north for 3.275 miles, Saturday from 7:00 A.M. to midnight and Sunday from 9:00 A.M. to 2:00 P.M. The bike course involves longer distances, and participants are not permitted to "draft" behind other participants (therefore they will all be traveling individually on the affected roads). Because of the nature of the event, CHP is not requesting road closures on any of the roads involved in the bike course. However, traffic will be monitored along the entire route. A sufficient amount of parking will be accommodated in the parking area of Chaparral Cove, therefore a shuttle system will not be necessary. The impact on traffic will be slight since the greatest amount of sustained traffic related to the event will be between 5:00 A.M. and 6:30 A.M., when the athletes arrive.

The event organizer has contracted with American Medical Response West (AMR West) for standby ambulance service for the duration of both days' events. Aid stations, latrines, and waste receptacles will be placed off the roadway at various locations.

The event organizer will place a notice in the newspapers serving the area at least 14 days prior to the event describing the date and time of the event and a contact name and phone number where information may be obtained. Residents in the road closure portion of Berryessa-Knoxville Road will receive a letter 14 days before the event. The event flyer, letter to residents, and resolution are attached.

The following conditions are being required by Public Works to ensure adequate notification to the public and to provide a safe environment:

- a. All traffic control devices and personnel be in conformance with Caltrans' Traffic Manual.
- b. All properties having access to the portion of Berryessa-Knoxville Road being closed shall be notified prior to the event and access shall be provided to them during the event.
- c. Access shall be provided for emergency vehicles at all times.
- d. Alpha Win - Napa Valley shall contract with the California Highway Patrol (CHP) for traffic control services during the event.
- e. A certificate of insurance in the amount of \$1,000,000 shall be provided to the County naming the County of Napa as additional insured.
- f. All costs of clean up and repairs to County facilities damaged as a result of this event shall be borne by Alpha Win - Napa Valley.

Calendar of Events

The following special events are scheduled in the six weeks prior to this event, with road closures as noted:

- Crush Challenge, Yountville to Rutherford, October 9 - no road closures
- Foxy's Fall Century, Wooden Valley Road, October 16 - no road closures

SUPPORTING DOCUMENTS

- A. Course Maps
- B. Letter to Residents
- C. Resolution

Napa Valley, California

Bike Course

3 miles/12.4 miles/24.8 miles/56 miles/112 miles

OPEN: Sunday, April 11, 2021

- Bike: 3 miles (out-n-back)
 - Exit T1, L onto Berryessa Knoxville Rd.
 - Turn around at 1.5 miles and return on same route to T2

SPRINT: Sunday, April 11, 2021

- Bike: 12.4 miles (out-n-back)
 - Exit T1, L onto Berryessa Knoxville Rd.
 - Turn around at 6.2 miles and return on same route to T2

OLYMPIC: Sunday, April 11, 2021










- Bike: 24.8 miles (out-n-back)
 - Exit T1, L onto Berryessa Knoxville Rd.
 - Turn around at 12.4 miles and return on same route to T2

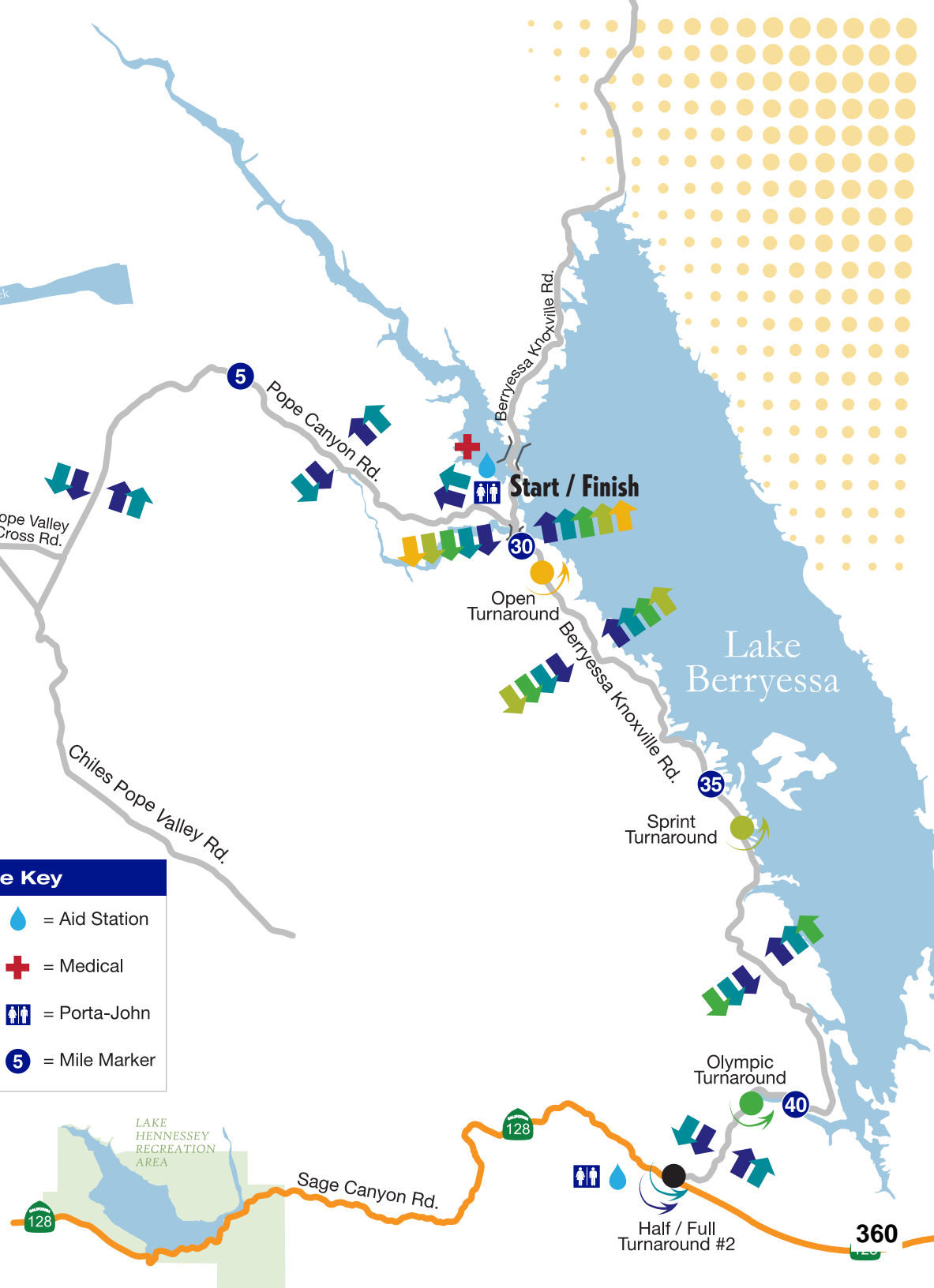
HALF: Saturday, April 10, 2021

- Bike: 56 miles (out-n-back)
 - Exit T1, L onto Berryessa Knoxville Rd.
 - R on Pope Canyon Rd.
 - R on Pope Valley Cross Rd.
 - R on Pope Valley Rd./Butts Canyon Rd. to Turnaround #1 and return on same route toward Chaparral Cove
 - R on Berryessa Knoxville Rd. to Turnaround #2
 - R into Chaparral Cove to T2

FULL: Saturday, April 10, 2021

- Bike: 112 miles (two out-n-backs)
 - Exit T1, L onto Berryessa Knoxville Rd.
 - R on Pope Canyon Rd.
 - R on Pope Valley Cross Rd.
 - R on Pope Valley Rd./Butts Canyon Rd. to Turnaround #1 and return on same route toward Chaparral Cove
 - R on Berryessa Knoxville Rd. to Turnaround #2
 - Return to Chaparral Cove and begin second out-n-back
 - R into Chaparral Cove to T2

Course Key	
	= Open
	= Sprint
	= Olympic
	= Half
	= Full
	= Aid Station
	= Medical
	= Porta-John
	= Mile Marker





Napa Valley, California

Run Course

1 mile/3.1 miles/6.2 miles/13.1 miles/26.2 miles

OPEN: Sunday, April 11, 2021

- Run: 1 mile (out-n-back)
 - Exit T2, R onto Berryessa Knoxville Rd.
 - Turn around at .5 miles and return on same route to Finish

SPRINT: Sunday, April 11, 2021

- Run: 3.1 miles (out-n-back)
 - Exit T2, R onto Berryessa Knoxville Rd.
 - Turn around at 1.55 miles and return on same route to Finish

OLYMPIC: Sunday, April 11, 2021

- Run: 6.2 miles (out-n-back)
 - Exit T2, R onto Berryessa Knoxville Rd.
 - Turn around at 3.1 miles and return on same route to Finish

HALF: Saturday, April 10, 2021

- Run: 13.1 miles (two out-n-backs)
 - Exit T2, R onto Berryessa Knoxville Rd.
 - Turn around at 3.275 miles and return on same route to begin second out-n-back to Finish

FULL: Saturday, April 10, 2021

- Run: 26.2 miles (four out-n-backs)
 - Exit T2, R onto Berryessa Knoxville Rd.
 - Turn around at 3.275 miles and return on same route to begin second, third, and fourth out-n-back to Finish

Course Key			
	= Open		= Trail
	= Sprint		= Aid Station
	= Olympic		= Medical
	= Half		= Porta-John
	= Full		= Mile Marker



Napa Valley, California

Swim Course

100 meters/750 meters/1,500 meters/1.2 miles/2.4 miles

OPEN: Sunday, April 11, 2021

- Swim: 100 meters (one loop)
 - 1) - Beach start at Lake Berryessa's Chaparral Cove
 - 2) - Swim one loop in counter-clockwise direction
 - 3) - Exit water to T1

SPRINT: Sunday, April 11, 2021

- Swim: 750 meters (one loop)
 - 1) - Beach start at Lake Berryessa's Chaparral Cove
 - 2) - Swim one loop in counter-clockwise direction
 - 3) - Exit water to T1

OLYMPIC: Sunday, April 11, 2021










- Swim: 1,500 meters (two loops)
 - 1) - Beach start at Lake Berryessa's Chaparral Cove
 - 2) - Swim two loops in counter-clockwise direction
 - 3) - Exit water to T1

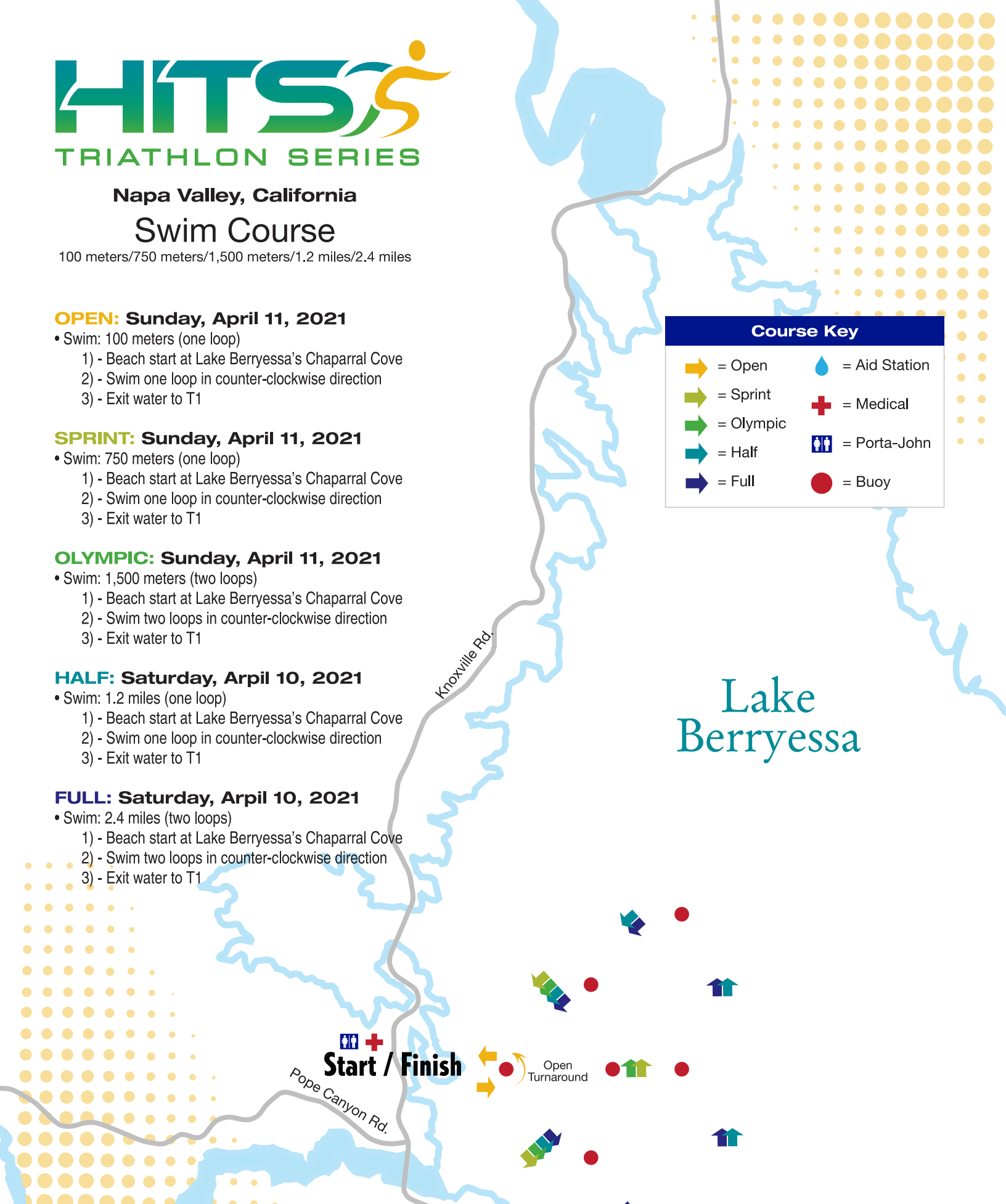
HALF: Saturday, April 10, 2021

- Swim: 1.2 miles (one loop)
 - 1) - Beach start at Lake Berryessa's Chaparral Cove
 - 2) - Swim one loop in counter-clockwise direction
 - 3) - Exit water to T1

FULL: Saturday, April 10, 2021

- Swim: 2.4 miles (two loops)
 - 1) - Beach start at Lake Berryessa's Chaparral Cove
 - 2) - Swim two loops in counter-clockwise direction
 - 3) - Exit water to T1

Course Key	
 = Open	 = Aid Station
 = Sprint	 = Medical
 = Olympic	 = Porta-John
 = Half	 = Buoy
 = Full	





Alpha Win
319 Main Street
Saugerties, NY 12477
845-247-7275

September 30, 2021

Dear Berryessa Park / Berryessa Knoxville Road Property Owner:

This is to notify you that a triathlon race event, consisting of swim, bike and run will be conducted in and around Putah Canyon Recreation Area at Lake Berryessa, Napa, CA on Saturday, October 30, 2021 between 7:00 AM and 11:59 PM and on Sunday October 31, 2021 between 8:00 AM and 2:00 PM.

A portion of Berryessa Knoxville Road that is located north of Putah Canyon Recreation Area will be partially closed during the race with traffic control provided by the California Highway Patrol. Local residents will be able to enter or leave their property with the potential of some minor delays occasioned by the race.

There will be no other closures of any roadways. However, expect some delays due to cyclists on the following roads: Berryessa Knoxville Rd., Pope Canyon Rd., Pope Valley Cross Road, and Pope Valley Rd./Butts Canyon Rd.

For more information, please contact John A. Eickman by telephone at 845-247-7275 or by email at john@hitsendurance.com.

Bests regards,

John A. Eickman

RESOLUTION NO. _____

**RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS,
STATE OF CALIFORNIA, TEMPORARILY CLOSING A PORTION OF
BERRYESSA-KNOXVILLE ROAD**

WHEREAS, Section 21101 of the California Vehicle Code allows local authorities to adopt rules and regulations by resolution to provide for temporarily closing a portion of any street or road for celebrations, parades, local special events, and other purposes when, in their opinion, the closing is necessary for the safety and protection of persons who are to use that portion of the street or road during the temporary closing; and

WHEREAS, the sponsor, HITS, Inc., a Delaware corporation, (“Permittee”) of the “Alpha Win – Napa Valley” (formerly HITS Triathlon Series) has requested special events permit for two races to be held on Saturday, October 30, 2021 between 7:00 A.M. and midnight and three races on Sunday, October 31, 2021 between 9:00 A.M. and 2:00 P.M.; and

WHEREAS, Permittee has requested in its special events permit applications the temporary closure of the Berryessa-Knoxville Road from Chaparral Cove to 6.55 miles north of that point on Berryessa-Knoxville Road during the events.

NOW, THEREFORE, BE IT RESOLVED by the Napa County Board of Supervisors pursuant to Section 21101 of the California Vehicle Code that the Board hereby permits the temporary closure of the Berryessa-Knoxville Road from Chaparral Cove to 6.55 miles north of that point on Saturday, October 30, 2021 from 7:00 A.M. to midnight and Sunday, October 31, 2021 from 9:00 A.M. to 2:00 P.M. to provide during those periods for the safety and protection of persons using those portions of such County roads during the “Alpha Win – Napa Valley” special events, subject to the following conditions:

1. Permittee will furnish to the County a Certificate of Insurance in the amount of \$1,000,000 with an endorsement naming Napa County and its officers, employees, agents, and volunteers as additional insureds;
2. Traffic control measures including but not limited to signs, barricades and cones shall be used as directed by traffic control personnel and be in accordance with the requirements of the State of California, Department of Transportation, Traffic Manual and as approved by Napa County, both as to type and location;
3. Permittee shall have entered into a contract with the California Highway Patrol for traffic control services during the event;
4. Permittee acknowledges the County, at its sole discretion, has the right to cancel or terminate the event in the interest of public or participant safety.

5. The owners and occupants of all properties having access to the portion of Berryessa-Knoxville Road being closed shall be notified by Permittee or their representative prior to the event and access shall be provided to them during the event;
6. Access and through travel, if necessary, shall be provided for emergency vehicles at all times; and
7. All clean-up and repair of any damage done to County-owned facilities as a result of this event shall be done by the Permittee at Permittee's expense.

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 _____ day of _____, 2021, by the following vote:

AYES: SUPERVISORS _____

NOES: SUPERVISORS _____

ABSTAIN: SUPERVISORS _____

ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of
the State of California

By: _____
ALFREDO PEDROZA, Chair of the Board
of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas S. Capriola</u> Deputy County Counsel</p> <p>Date: <u>September 30, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>_____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-959

TO: Board of Supervisors
FROM: Oscar Ortiz - Sheriff - Coroner
REPORT BY: Rollie Soria - Staff Services Analyst II
SUBJECT: Budget Adjustment & Capital Asset Purchase: Search & Rescue Trailer

RECOMMENDATION

Sheriff requests approval of a Budget Transfer transferring \$5,655 from Law Enforcement Supplies to Equipment appropriation within Sheriff's budget and establishment of a capital asset in the amount of \$5,655 for the purchase of an Echo Elite Trailer. (4/5 vote required)

EXECUTIVE SUMMARY

In 2020, Sheriff's Office Search and Rescue Unit's (SAR) off-road vehicle trailer was involved in a jackknife accident, causing irreparable damage and rendering it a total loss. Approval of today's actions would allow the Sheriff's Office to purchase a replacement trailer and establish it as a capital asset. The trailer is used to transport SAR off-highway vehicles, such as all-terrain vehicles (ATV) and utility vehicles (UTV).

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Since creation of the FY 2021/2022 budget, trailer prices have increased. \$2,000 for SAR trailer replacement was budgeted in Sheriff's Office law enforcement supplies account. SAR total budget in law enforcement supplies account is \$10,000. The additional cost of the trailer will come from within that budgeted amount.
Is it Mandatory or Discretionary?	Discretionary

Discretionary Justification:	In 2020, the Sheriff's Office SAR trailer was involved in a vehicle jackknife accident, resulting in irreparable damage to the trailer. A replacement trailer is needed to keep the SAR Unit and its vehicles mission ready.
Is the general fund affected?	Yes
Future fiscal impact:	Maintenance and registration costs will be budgeted in future fiscal years.
Consequences if not approved:	If not approved, Sheriff's office will not purchase the trailer and the SAR Unit would not have a replacement trailer to transport its off-highway vehicles.
County Strategic Plan pillar addressed:	Effective and Open Government

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.

BACKGROUND AND DISCUSSION

Napa County Sheriff's Office Search and Rescue Unit (SAR) provides search and rescue services to all areas of the county. The unit's mission is to locate and rescue victims in urban areas or wild lands, aircraft and boating accidents, and in natural or manmade disasters. The unit is always mission ready and available 24 hours a day, 365 days per year. The unit is primarily comprised of civilian volunteers with expertise in search and rescue skills, including ground tracking, emergency medicine, rope rescue, ATV/UTV, helicopter operations and search management.

The unit is overseen by liaison officers assigned by the Sheriff's Office. SAR conducts search and rescue operations using off-highway vehicles owned and maintained by the Sheriff's Office. Currently, SAR utilizes two utility vehicles (UTV) and two off-highway motorcycles to aid in search and rescue operations. A trailer is used to transport these off-road vehicles to and from SAR operations.

In 2020, the SAR trailer was involved in a jackknife accident while being towed, resulting in major damage. Carl's Body Shop, Inc. in St. Helena assessed the damage and advised that the trailer frame was bent beyond repair and was a total loss. The Sheriff's Office proposes to purchase an Echo Elite Trailer as a replacement, which would allow SAR to continue to use all vehicles at its disposal during operations.

Approval of today's actions will allow Sheriff's Office to purchase an Echo Elite Trailer with no change to total appropriations and establish it as a capital asset in the amount of \$5,655.



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-937

TO: Board of Supervisors
FROM: Minh C. Tran - County Executive Officer
REPORT BY: Nelson Cortez - Staff Assistant BOS
SUBJECT: Nomination of CSAC Board of Directors Member and Alternate for year 2021-2022

RECOMMENDATION

County Executive Officer requests appointment of one member and one alternate member of the Board of Supervisors to serve on the California State Association of Counties (CSAC) Board of Directors for the 2021-2022 year beginning on Monday, November 29, 2021.

EXECUTIVE SUMMARY

This item requests the appointment of one member and one alternate member of the Board of Supervisors to serve on the California State Association of Counties (CSAC) Board of Directors for the 2021-2022 year. Supervisor Diane Dillon was appointed as the regular member and Supervisor Ryan Gregory was appointed as the alternate member for the 2020-2021 year on 10/6/2020.

The Napa County Policy Manual, Section 8B, Rules of Conduct of Business - Rule 24 entitled, "Guidelines for Appointment of Board Members to Serve on Committees, Commissions, and Other Boards" addresses the issue of appointments.

PROCEDURAL REQUIREMENTS

1. Staff reports.
2. Public comments.
3. Motion, second, discussion and vote on the item.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No
County Strategic Plan pillar addressed: Effective and Open Government

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.

BACKGROUND AND DISCUSSION

According to the California State Association of Counties (CSAC) Constitution, members of the CSAC Board of Directors are elected by their respective Boards of Supervisors to serve one-year terms that begin on the first day of the CSAC Annual Conference each year.

Attached is a memorandum from CSAC dated September 15, 2021 requesting that the Napa County Board of Supervisors appoint its representatives (one member and one alternate) to serve on the CSAC Board of Directors for the one-year term that begins on Monday, November 29, 2021. The appointment should be made prior to the annual conference scheduled to begin on November 29, 2021. There is no stipend involved in the appointment to the CSAC Board of Directors.

At the Board of Supervisors Meeting on October 6, 2020, Supervisor Diane Dillon was appointed Napa County's CSAC Representative and Supervisor Ryan Gregory was appointed as the Alternate CSAC Representative.

The Napa County Policy Manual, Section 8B, Rules of Conduct of Business - Rule 24 entitled, "Guidelines for Appointment of Board Members to Serve on Committees, Commissions, and Other Boards" addresses the issue of appointments as follows:

"RULE 24. Guidelines for Appointment of Board Members to Serve on Committees, Commissions, and Other Boards.

At the first Board meeting following the first Monday in January, and thereafter in accordance with the Maddy Act, where applicable (Government Code section 54970 et seq.) when new positions are created or unexpected vacancies occur, the Board shall make appointments to those various boards, commissions, committees and authorities on which Board members are asked to serve. The Board will make such appointments in accordance with the following guidelines, unless in specific instances the Board determines by majority vote that a different procedure should be followed:

A. Appointments to existing positions made vacant by expiration of the term of the appointment will be made as follows:

1. To promote continuity, the incumbent supervisor will be reappointed unless they choose not to serve a subsequent term or are otherwise unavailable.
2. If the incumbent supervisor chooses not to be reappointed or is unavailable, the Board may appoint any other supervisor expressing an interest in serving.

B. Appointments to new positions and to positions resulting from unexpected vacancies during a term will be made as follows:

1. The Board may appoint any supervisor expressing an interest to an existing committee or commission to fill an unexpected vacancy during the term.
2. If a new committee, commission or board was created at the request of a particular supervisor, that supervisor shall be appointed, unless they decline to serve; otherwise the Board may appoint any other supervisor expressing an interest in serving.

C. Notwithstanding (A) and (B), no supervisor shall be appointed to serve on a committee, commission or board whose regular meeting dates and times conflict on three or more consecutive occasions with those of one or more other committees, commissions or boards to which that supervisor has already been appointed, unless the supervisor resigns from the conflicting appointment or appointments..."



OFFICERS

President

James Gore
Sonoma County

1st Vice President

Ed Valenzuela
Siskiyou County

2nd Vice President

Chuck Washington
Riverside County

Past President

Lisa A. Bartlett
Orange County



EXECUTIVE DIRECTOR

Graham Knaus

September 15, 2021

TO: Chairs, Boards of Supervisors

FROM: Graham Knaus, Executive Director

SUBJECT: Nomination and Selection of CSAC Board of Directors Members

Under provisions of the CSAC Constitution, members of the Board of Directors and alternates are nominated by their respective boards of supervisors and appointed by the Executive Committee to a one-year term commencing with the first day of the CSAC Annual Conference. The 2021 CSAC Annual Conference will begin on Monday, November 29, 2021. Any member of your Board of Supervisors is eligible for the directorship.

Each year, the new CSAC Board of Directors holds its first official meeting at the Association's annual conference. **Thus, it is important that your county appoints a representative to participate at the first meeting on Thursday, December 2, 2021.** Enclosed is a list of current Board of Directors, along with a form for your county to notify us of your Board's nomination.

Please note that if we do not receive your 2021-2022 nomination, your current Board representative will continue to serve on our Board of Directors. It is important to note that counties have the ability to change Board representatives and/or alternates at any point throughout the year subject to final appointment by the CSAC Executive Committee.

The new Board of Directors will meet during the annual conference, first by caucus (urban, suburban, and rural) to nominate CSAC Officers and Executive Committee members, and again as a full Board to elect the 2021-2022 Executive Committee and to conduct other Association business. Please note that under the CSAC Constitution, Executive Committee members are elected from the membership of the Board of Directors.

If you have any questions or need further information, please contact Korina Jones at (916) 327-7500 x 508 or by email at kjones@counties.org.

Enclosures

cc: 2020-2021 Board of Directors
Clerks, Board of Supervisors

CALIFORNIA STATE ASSOCIATION OF COUNTIES

Board of Directors

2020-2021

SECTION

U=Urban

S=Suburban

R=Rural

President:

First Vice President:

Second Vice President:

Immediate Past President:

James Gore, Sonoma

Ed Valenzuela, Siskiyou

Chuck Washington, Riverside

Lisa Bartlett, Orange

SECTION	COUNTY	DIRECTOR
U	Alameda County	Keith Carson
R	Alpine County	Terry Woodrow
R	Amador County	Richard Forster
S	Butte County	Debra Lucero
R	Calaveras County	Merita Callaway
R	Colusa County	Kent Boes
U	Contra Costa County	John Gioia
R	Del Norte County	Chris Howard
R	El Dorado County	Sue Novasel
U	Fresno County	Buddy Mendes
R	Glenn County	Keith Corum
R	Humboldt County	Virginia Bass
S	Imperial County	Raymond Castillo
R	Inyo County	Jeff Griffiths
S	Kern County	Zack Scrivner
R	Kings County	Craig Pedersen
R	Lake County	Bruno Sabatier
R	Lassen County	Chris Gallagher
U	Los Angeles County	Kathryn Barger
R	Madera County	David Rogers
S	Marin County	Damon Connolly
R	Mariposa County	Miles Menetrey
R	Mendocino County	John Haschak
S	Merced County	Scott Silveira
R	Modoc County	Ned Coe
R	Mono County	John Peters
S	Monterey County	Luis Alejo
S	Napa County	Diane Dillon
R	Nevada County	Heidi Hall

U	Orange County	Lisa Bartlett
S	Placer County	Bonnie Gore
R	Plumas County	Greg Hagwood
U	Riverside County	Chuck Washington
U	Sacramento County	Sue Frost
R	San Benito County	Bea Gonzalez
U	San Bernardino County	Janice Rutherford
U	San Diego County	Nora Vargas
U	San Francisco City & County	Rafael Mandelman
U	San Joaquin County	Chuck Winn
S	San Luis Obispo County	Bruce Gibson
U	San Mateo County	Carole Groom
S	Santa Barbara County	Das Williams
U	Santa Clara County	Susan Ellenberg
S	Santa Cruz County	Bruce McPherson
S	Shasta County	Leonard Moty
R	Sierra County	Lee Adams
R	Siskiyou County	Ed Valenzuela
S	Solano County	Erin Hannigan
S	Sonoma County	Lynda Hopkins
S	Stanislaus County	Vito Chiesa
R	Sutter County	Dan Flores
R	Tehama County	Robert Williams
R	Trinity County	Keith Groves
S	Tulare County	Amy Shuklian
R	Tuolumne County	Ryan Campbell
U	Ventura County	Kelly Long
S	Yolo County	Jim Provenza
R	Yuba County	Gary Bradford

ADVISORS

John Beiers, County Counsels' Association, Past President, San Mateo County
Frank Kim, California Association of County Executives, President, Orange County



California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814
Phone (916) 327-7500
Facsimile (916) 321-5047

NOMINATION OF CSAC BOARD OF DIRECTORS MEMBER FOR YEAR 2021 – 2022

The Board of Supervisors nominates the following named Supervisor(s) to a position on the CSAC Board of Directors for the 2021 – 2022 Association year beginning Monday, November 29, 2021.

County Name:

Director:

Alternate(s):

Name of individual completing form:

Does the Board of Directors member plan to attend the CSAC Annual Conference:

Yes:

No:

PLEASE RETURN TO:

Korina Jones via email at: kjones@counties.org



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1053

TO: Board of Supervisors
FROM: Minh C. Tran, County Executive Officer
REPORT BY: Leigh Sears, Concessions Manager
SUBJECT: Lake Berryessa Concessions - Exclusive Negotiation Agreement with Sun Communities

RECOMMENDATION

County Executive Officer will provide an update of activities at Lake Berryessa and requests approval of and authorization for the Chair to sign the following agreements:

1. Exclusive Negotiation Agreement with Sun Lake Berryessa LLC (Sun Communities) to conduct environmental studies, site investigation and due diligence, prepare environmental documents, and enter into negotiations for a long-term agreement for development and operation of resort concessions at Steele Canyon, Spanish Flat, and Monticello Shores concession areas; and
2. Amendment No. 2 to Agreement No. 170664B-17 with Ragatz Realty increasing the amount by \$15,000 for a new maximum of \$140,000, extending the term through June 30, 2022, and amending the scope of work to include identification of eligible bidders for Berryessa Point.

EXECUTIVE SUMMARY

Staff will provide the Board with an update of activities to date regarding development at Lake Berryessa. The County has assumed management of certain concession areas at Lake Berryessa from the United States Bureau of Reclamation (BOR) pursuant to a Managing Agreement executed in March 2020. Pursuant to the Managing Agreement, the County issued Request for Proposals No. CEO112001 for resort concession areas at Lake Berryessa (RFP) for Steele Canyon, Spanish Flat, and Monticello Shores. County staff and Ragatz Realty, a real estate consultant retained by the County reviewed the proposals and selected Sun Communities as the firm to recommend to the Board of Supervisors for approval to develop resort concessions at Steele Canyon, Spanish Flat, and Monticello Shores.

Today's requested action will commit the County to negotiating exclusively with Sun Communities on one or more long term concessions agreements for the three concession areas, while Sun Communities conducts due diligence, site investigations, environmental studies, and prepares CEQA and NEPA documents and will amend the contract with Ragatz Realty to include support in issuing a Request for Information for viable concessionaires for Berryessa Point.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Where is it budgeted?	County Executive Office
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	Ragatz Realty is experienced in identifying viable concessionaire firms and is expert in recreational development. This agreement will assist the County to identify a concessionaire to successfully develop Berryessa Point.
Is the general fund affected?	Yes
Future fiscal impact:	None
Consequences if not approved:	Berryessa Point will not be developed in the near future.
County Strategic Plan pillar addressed:	Healthy, Safe, and Welcoming Place to Live, Work, and Visit

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The activities contemplated by the Agreement are either not a project subject to CEQA pursuant to CEQA Guidelines sections 15060(c)(3) and 15378, or consist of information gathering and investigations categorically exempt from CEQA pursuant to CEQA Guidelines section 15306.

BACKGROUND AND DISCUSSION

In March 2020, the BOR and the County entered into Managing Agreement Number 20-LC-20-2623 (Napa County Agreement No. 200285B), for the administration, operation, maintenance and development of public recreation facilities at Lake Berryessa. In November 2020, the County issued Request for Proposals No. CEO112001 for resort concession areas at Lake Berryessa (RFP) for Steele Canyon, Spanish Flat, and Monticello Shores. County staff and a real estate consultant retained by the County reviewed the proposals and selected Sun Communities as the firm to recommend to the Board of Supervisors for approval to develop resort concessions at all three locations.

The purpose of the Exclusive Negotiation Agreement is to commit the County to negotiating exclusively with Sun Communities on one or more long term concessions agreements for the three concession areas, while Sun Communities conducts due diligence, site investigations, environmental studies, and prepares CEQA and NEPA documents. The initial term of the Agreement is 24 months, though the studies, investigations, and preparation of environmental documents could be done sooner, or take longer, than the estimated 24 months. Sun

Communities may extend the term by 6 months in its sole discretion, but extensions beyond 6 months will require approval of the Board of Supervisors.

Negotiations on a long term concessions agreement will focus on when and how to implement the proposals Sun Communities submitted in response to the RFP for the three concession areas. Sun Communities' proposal is included as backup information for this agenda item. The Exclusive Negotiation Agreement does not commit Sun Communities to implementing its proposal, and they are free to cease pursuing any or all of the three concession areas at any time. However, Sun Communities has already mobilized engineers and other experts to start investigating and studying the concession areas, and is unlikely to back out of any of the locations unless they determine the proposed concessions are impractical or infeasible. The County anticipates Sun Communities will invest over \$100 million in the three concession areas, provide new employment opportunities, and possibly become an anchor for revitalization of the Lake Berryessa community.

Ragatz Realty, Inc. (formerly Ragatz Sedgwick Realty, Inc.) was originally selected to advise the County on the potential redevelopment and management of five concession areas on the shores of Lake Berryessa. The firm was chosen because of its principals' unique combination of academic accomplishment (Dr. Ragatz was previously a professor of urban and regional planning at the University of Oregon), deep experience in analyzing the feasibility of resort developments (more than 2,500 studies completed in 47 U.S. states and 70 foreign countries) and property development expertise (Grant Sedgwick has managed the design, construction and/or brokerage of several hotels, timeshare resorts, conference centers, golf clubs and restaurants).

Over the course of a five-year relationship with the County of Napa, Ragatz Realty has (i) completed an overview of the development potential of five concession sites at the Lake (ii) conducted - and subsequently updated -exhaustive market research and feasibility studies for all five resorts (iii) drafted and managed an initial Request for Information and Interest that resulted in nine responses from developers (iv) prepared fiscal impact studies of potential development scenarios for each concession site (v) advised senior County staff on complex negotiations with the Bureau of Reclamation (vi) drafted and managed a Request for Proposals for three concession sites that resulted in four extremely well-qualified responses, and (vii) provided extensive support to County staff in evaluating these proposals and making a definitive recommendation to the Board of Supervisors regarding the selection of a developer/operator. In all these assignments, the consultant's work has proven to be completely satisfactory.

Berryessa Point was not among the three initial sites for which last year's RFP was issued. It is the smallest of the five sites (55 acres compared to an average of 168 acres for the other four) and appeared to require extensive civil engineering reconstruction. Initial feasibility analysis assumed its development potential to be fairly limited - perhaps 100 sites for RV and tent camping, cabins and/or park models as well as 50 or so boat slips. However, it is a beautiful site, in a prominent location, for which expressions of developer/operator interest have recently been received. Ragatz Realty will assist staff development of a Request for Information for viable concessionaires for this additional site.

NAPA COUNTY AGREEMENT NO. _____

EXCLUSIVE NEGOTIATION AGREEMENT LAKE BERRYESSA CONCESSIONS

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the “**Agreement**”) is made and entered into effective as of October 19, 2021 (the “**Effective Date**”), by and between Napa County, a political subdivision of the State of California, (“**County**”) and Sun Lake Berryessa LLC, a Michigan limited liability company or its designated affiliate assignees (in each case “**Concessionaire**”) who for valuable consideration, agree as follows:

Article 1 – Negotiation

1.1 Background. The United States constructed Monticello Dam and Lake Berryessa and associated diversion facilities and canals located in Solano, Yolo, and Napa Counties pursuant to the Reclamation Project Act of 1939, and acquired ownership of certain lands for the purpose of constructing, operating, and maintaining said facilities. The United States Bureau of Reclamation (“**BOR**”) and the County entered into Managing Agreement Number 20-LC-20-2623 (Napa County Agreement No. 200285B) dated March 9, 2020, for the administration, operation, maintenance and development of public recreation facilities, protection of natural and cultural resources, and provision of public health and safety at Lake Berryessa. County issued Request for Proposals No. CEO112001 for resort concession areas at Lake Berryessa (“**RFP**”) on November 24, 2020, and Concessionaire (through Sun Communities, Inc., a Maryland corporation, the general partner of Sun Communities Operating Limited Partnership, a Michigan limited partnership (“**SCOLP**”) which is Concessionaire’s ultimate parent company), submitted the winning proposals for three parcels of real property located in Napa County, California, each of which front on Lake Berryessa and are commonly known as the Monticello Shores parcel, the Spanish Flat parcel, and the Steele Canyon parcel (collectively, the “**Properties**”). The Parties wish to enter into this Agreement to facilitate continued negotiations, environmental analysis, site investigation and due diligence of the Properties for purposes of resort concessions as detailed in the RFP (the “**Project**”) in accordance with the terms and conditions set forth herein.

1.2 Good Faith Negotiations. The County and Concessionaire agree for the period set forth below, to negotiate diligently and in good faith, pursuant to this Agreement, to prepare one or more Disposition and Development Agreements or other management or concessionaire agreements (“**DDAs**”) to be entered into between the County and Concessionaire with respect to the Properties, generally as set forth in the proposals submitted by Concessionaire. County staff recommended Concessionaire as the most qualified firm that submitted proposals that meets or exceeds the goals and objectives of the RFP and provides the highest monetary and other value to the County. The County agrees to negotiate exclusively with Concessionaire with respect to the Properties during the Negotiation Period set forth below.

1.3 Period of Negotiations. The Parties agree to negotiate one or more DDAs for the Properties for a twenty-four (24) month period ending on October 18, 2023 (“**Negotiation Period**”), commencing on the Effective Date. If the Parties have not reached agreement on DDAs for one or more of the Properties at the end of 24 months, then this Agreement shall automatically

terminate as to those Properties where agreement has not been reached. Concessionaire shall have no further rights regarding the Properties where agreement has not been reached, and the County shall be free to negotiate with any other persons or entities with regard to such Properties. The Negotiation Period (consisting of the Investigation and Approval Periods described below) may be extended by Sun for up to six (6) months by delivering written notice thereof to the County, but any further extensions will require the mutual written agreement of the Parties. The Negotiation Period shall consist of two periods, an Investigation Period and an Approval Period.

1.3.1 The “**Investigation Period**” shall be four (4) months starting on the Effective Date and ending on February 18, 2022. The County shall use reasonable efforts to assist Concessionaire in obtaining copies of all written reports, studies, investigations, information or material in the BOR's possession or control and not previously delivered to Concessionaire relating to the condition or development of the Property (the “Documents”). By way of example, without limitation, the term “Documents” shall refer to surveys, topographic maps, engineering plans and specifications, soil boring tests, soils analysis, environmental reports, water table analysis, pending litigation and/or claims, and related correspondence. During the term of this Agreement, Concessionaire shall have full access to inspect the Property, perform all testing, and inspect all records relating to the Property, without unreasonably interfering with ongoing concessions activity or BOR operations. During the Investigation Period, the Concessionaire has the right to terminate this Agreement for any reason or no reason whatsoever. If Concessionaire terminates this Agreement, Concessionaire will repair any damages to the Property caused by such investigations in a timely manner and in a good workmanship manner.

1.3.2 The “**Approval Period**” shall be twenty (20) months starting on February 19, 2022 and ending on October 18, 2023 to complete the environmental analysis documents in accordance with the California Environmental Quality Act (“**CEQA**”) and the National Environmental Policy Act (“**NEPA**”) and secure all necessary permits, licenses, governmental approvals, including rezoning, if necessary, approval to extend utilities to the boundary of the Property, and all other governmental approvals, permits and licenses required for Concessionaire to commence and complete the development of the Property (the “Governmental Approval”). Concessionaire will use commercially reasonable efforts to obtain the Governmental Approvals. However, during the Approval Period Concessionaire has the right to terminate this Agreement for any reason or no reason whatsoever.

1.4 Concessionaire’s Representations and Warranties. Concessionaire hereby represents the following to the County, for the purpose of inducing the County to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date:

1.4.1 Concessionaire is a Michigan limited liability company, duly formed, validly existing, in and in good standing under the laws of the state of formation, and certified in good standing under the laws of the State of California by the California Secretary of State.

1.4.2 Concessionaire has the legal power, right and authority to enter into this Agreement, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

1.4.3 Concessionaire's undertakings pursuant to this Agreement are for the purpose of negotiating diligently and in good faith to prepare one or more DDAs to be entered into between the County and Concessionaire for the Properties and not for speculation in land holding.

1.4.4 The persons executing this Agreement, the instruments referenced herein, and any other documents executed and delivered on behalf of Concessionaire have the full right, power and authority to do so and have been duly authorized to do so by Concessionaire, and no further action, nor any other persons are required to execute this Agreement on behalf of Concessionaire.

1.5 County's Representations and Warranties. The County hereby represents the following to Concessionaire, for the purpose of inducing Concessionaire to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date:

1.5.1 The Properties are owned by the federal government. All of the County's rights, obligations, and interests in the Properties, as granted by the BOR for development of concessions, are contained in Managing Agreement Number 20-LC-20-2623 ("**Managing Agreement**") dated March 9, 2020.

1.5.2 The County has not, and during the Negotiation Period will not, enter into any agreements which would be binding on Concessionaire upon the effective date of a DDA or which would adversely affect Concessionaire's ability to implement its proposals submitted in response to the RFP, other than Managing Agreement.

1.5.3 Neither this Agreement nor anything to be done by the County pursuant to this Agreement, including the transfer of the County's right to develop the Properties as contemplated herein, will violate any contract, agreement or instrument to which the County is a party, except as would not have a material adverse effect on Concessionaire's ability to implement its proposals submitted in response to the RFP.

1.6 Consideration at Public Meeting. If the negotiations culminate in one or more DDAs, such an agreement becomes effective only after and if the DDA and other documents have been considered and approved by the Board of Supervisors after a public meeting. However, County is not obligated to expedite any reviews, approvals, notices, meetings, or other matters, and nothing contained in this Agreement shall be construed to limit the County's discretion in their activities hereunder or to cause County to incur any liability or obligation in connection with any delays in the approval of a DDA.

1.7 No waiver of Public Agency Powers/Consent. County is a public agency, but is entering this agreement as a proprietary party and not in its regulatory role, and as such its police powers

are entirely undiminished by any terms of this Agreement and are not waived or abrogated. In no way shall any consent by County in its regulatory capacity be deemed to constitute consent of County in its proprietary capacity, and vice versa.

Article 2 – Proposed Development

2.1 Development Concept and Essential Terms and Conditions. The proposed development to be negotiated hereunder shall be consistent with the proposals submitted by Concessionaire submitted in response to the RFP, the Managing Agreement, BOR policies, and any other applicable law or governmental regulation. The Parties acknowledge that the Project (including aesthetics, constructability, financial feasibility, environmental requirements, development timetable and other considerations) shall be generally consistent with the design principles set forth below and will be part of the analysis to be undertaken by Concessionaire and the County during the Negotiation Period. The Concessionaire's general design concept provides for conceptual development, construction, and operation of concessions and other recreational opportunities at the Properties, to be memorialized in the DDAs. The essential terms and conditions of any such DDAs entered into with Concessionaire shall be in general conformance with the following requirements:

2.1.1 On February 26, 2021, Concessionaire submitted three proposals to the County in response to the County's issuance of the RFP for concessions at the Properties. The Concessionaire's proposals, which includes a pro forma detailing potential development costs and revenues, constitute the frame of reference for the development to be negotiated hereunder.

2.1.2 The Properties are owned by the federal government and cannot be purchased by Concessionaire. The term of the Managing Agreement is fifty-five (55) years, and the parties anticipate the terms of the DDAs will be co-terminus with the fifty-five (55) year term of the Managing Agreement, including a reasonable period to wind down operations if necessary. The Concessionaire will take possession of the Properties "as is," subject to any easements, covenants, and restrictions with no warranties of any kind, express or implied.

2.1.3 Concessionaire will design, construct, and operate the development on the Properties at its own cost and expense, in accordance with a schedule of performance and the scope of development to be negotiated as part of the DDAs and the plans and specifications prepared by Concessionaire and approved by the County and BOR.

2.1.4 Concessionaire will charge fees for concessions and other facilities developed pursuant to the DDAs. Such fees will be subject to the approval of the County, which shall not be unreasonably withheld.

2.1.5 Concessionaire will secure all necessary planning, zoning and other entitlement and permit approvals for the proposed development as contemplated by the DDA at its own cost and expense.

2.1.6 Concessionaire shall be responsible for design and construction of any improvements in public rights-of-way adjacent to the Properties, at Concessionaire's own cost and expense, unless the County and Concessionaire agree otherwise in writing.

2.1.7 Concessionaire will pay the County a percentage of the revenue generated at the Properties to help offset the County's costs associated with the construction and operation of the development, such as costs associated with increased law enforcement and fire protection, unless the County and Concessionaire agree otherwise in writing.

2.1.8 Concessionaire will need to contribute towards the cost of improvements to local water and sewer facilities, in addition to capacity and connection fees, in order to ensure reliable service to the Properties.

2.1.9 Concessionaire may be required to provide a bond or other security to ensure construction is completed once commenced.

2.2 Concessionaire's Interim Submittals. Concessionaire shall submit to the County the following described work items to be used in connection with the negotiations, no later than eighteen (18) months after the Effective Date:

2.2.1 Concessionaire will complete an architectural program with an architect, including site plans, floor plans, elevation studies, and building sections for all the Properties. Submit notice to the County that the Concessionaire has determined that the Properties are suitable or unsuitable for the proposed development.

2.2.2 Concessionaire will submit schematic package including refinement of the above tasks together with parking, presentation drawings and cost analysis and project pro forma, and complete draft permit applications.

2.2.3 Concessionaire will provide complete project information for the above tasks and as may be required for applications necessary for planning, zoning, and other entitlement and permit approvals for the proposed development as contemplated by the DDA, to the reasonable satisfaction of the County.

2.3 Concessionaire's Findings, Determinations, Studies, and Reports. From time-to-time, as requested by the County, Concessionaire agrees to make reasonable oral and written progress reports, and to submit to the County non-proprietary third-party reports and analyses, advising the County related to the development, including financial feasibility analyses, construction cost estimates, marketing studies and similar due diligence matters, completed for purposes of development of the Properties, and all such reports and analyses shall include County as a party who may rely on such reports. Should negotiations not result in a DDA between the County and Concessionaire for one or more of the Properties, the County may retain the non-proprietary third-party plans, studies, reports, and drawings prepared by or for Concessionaire with respect to development, any alternatives, financial feasibility analyses, construction cost estimates,

marketing or pro forma studies and similar due diligence matters, including assignment of all reports. The County may use these plans, studies, reports, and drawings provided by the Concessionaire in any way deemed by the County to be of benefit to the successful implementation of concessions at the Properties. Information to be reported to or submitted to the County shall include any non-proprietary third-party due diligence materials prepared for any prospective development partner, joint venture, or management entity. All costs incurred by Concessionaire in the preparation and presentation of such findings, determinations, studies, reports, or other requests by the County under this Agreement shall be at the sole cost and expense of Concessionaire.

2.4 Environmental Studies. Concessionaire shall prepare all required environmental analysis documents in accordance with the CEQA and NEPA at its own cost and expense. Concessionaire's consultants and professionals to be used in preparing the CEQA/NEPA document shall be subject to approval of the County CEO or his designee pursuant to section 3.4. If the quality or pace of environmental review is inadequate as reasonably determined by the County CEO, then the County shall so inform Concessionaire and Concessionaire shall inform and direct its consultants to devote additional resources and/or correct the deficient work, but the cost of the consultant shall remain the Concessionaire's expense. The County and Concessionaire shall agree upon the scope of the CEQA/NEPA document prior to initiating preparation. The County and Concessionaire will meet at least monthly to discuss potential impacts and ongoing studies, review draft documents, respond to comments and other public input, towards the goal of submitting final environmental documents to the Board of Supervisors and BOR for consideration in conjunction with the DDAs and any other necessary discretionary approvals for the project.

2.5 Community Outreach meetings. Concessionaire will conduct a series of public outreach meetings (minimum of 2) within the general Lake Berryessa community prior to finalizing the site plans and executing the DDAs. Such meetings will be held at the sole cost of Concessionaire. The purpose of the meetings is to present Concessionaire's proposals and receive public input.

Article 3 – The Concessionaire

3.1 Nature of the Concessionaire. Concessionaire shall be Sun Lake Berryessa LLC, a Michigan limited liability company. However, the County acknowledges that the Concessionaire or SCOLP may intend to form a new entity controlled by Concessionaire that will be the Concessionaire entity that will be the party to the DDA. The County shall have the right to review and approve the organizational documents of such entity and the entities comprising such entity. The Concessionaire hereunder and under the DDA shall be an entity authorized to conduct business in the State of California by the California Secretary of State. Prior to submission of an executed DDA, Concessionaire shall submit a copy of any executed formation documents (e.g., limited liability company operating agreement, partnership agreement, etc.), as well as all organizational documents of each entity participating in the joint venture, for review and approval by the County, which approval shall not be unreasonably withheld. Such agreement may be redacted to remove financial terms or other confidential information contained therein,

provided that such redactions do not limit the County's ability (as determined by the County, in its sole discretion) to complete a comprehensive evaluation of the organizational structure of Concessionaire and all entities participating in the joint venture.

3.2 Offices of the Concessionaire. Notices or materials to be provided to Concessionaire under this Agreement shall be sent to:

Sun Communities, Inc.
27777 Franklin Rd. Ste. 200
Southfield, MI 48034
Attn: Bill Raffoul, SVP, Development Strategy
braffoul@suncommunities.com

With a copy to:

Jaffe Raitt Heuer & Weiss, P.C.
27777 Franklin Road, Suite 2500
Southfield, Michigan 48034
Attn: Mark P. Krynski
mkrynski@jaffelaw.com

3.3 Principals and Employees of the Concessionaire. The Concessionaire's initial employees or representatives who are to be directly involved in this development and who have been designated to negotiate the DDA with the County, and to engage in the activities necessary to determine the feasibility of the Development are as follows:

Bill Raffoul, SVP, Development Strategy
Sun Communities, Inc.
27777 Franklin Rd. Ste. 200
Southfield, MI 48034
braffoul@suncommunities.com

Mark P. Krynski
Jaffe Raitt Heuer & Weiss, P.C.
27777 Franklin Road, Suite 2500
Southfield, Michigan 48034
mkrynski@jaffelaw.com

3.4 Concessionaire's Consultants and Professionals. Concessionaire's third party consultants and professionals for the CEQA and NEPA reports (other than its attorneys) shall be subject to the reasonable approval of the County CEO or his designee, which approval shall not be unreasonably withheld. The CEO or his designee shall not withhold, condition, or delay their approval of any of the foregoing persons unless the CEO or his designee reasonably determines that a proposed person does not have sufficient financial, technical, or operational capabilities or

experience to perform the work or such person is reasonably believed to not be of good character or reputation.

Article 4 – Evaluation of Properties

4.1 Due Diligence. During the Negotiation Period, Concessionaire may conduct due diligence on the Properties to determine the feasibility of utilizing the Properties for the Project as proposed by Concessionaire. This may include, but not be limited to:

4.1.1 Compiling and reviewing existing data with respect to the Properties from any governmental authorities and any other third parties who may have relevant information.

4.1.2 Performing any necessary or desirable non-invasive analyses, examinations, investigations, tests and inspections of the Properties and existing improvements, including but not limited to, surveys, inspections, and environmental studies.

4.1.3 Performing invasive analyses, examinations, investigations, tests, and inspections if, and solely to the extent, recommended as a result of the non-invasive due diligence, and subject to the County's prior written approval, which shall not be unreasonably withheld or delayed.

4.1.4 Contacting utility providers who will furnish water, sewer, electric power, telephone service or any other utility to the Properties as to any matters which may affect or be necessary to the development.

4.1.5 Evaluating all statutory and regulatory restrictions and controls with respect to development on the Properties, which may require contacting local, state, or federal agencies with potential jurisdictional authority concerning development on the Properties to ascertain any such restrictions and controls.

4.2 Indemnification. Concessionaire shall take all safety measures that are reasonably necessary to prevent injury to persons or property resulting from Concessionaire's due diligence activities on the Properties. The County may immediately terminate the access provided hereunder if it determines, in its sole discretion, that Concessionaire's activities may cause unreasonable risk to human health or property. Concessionaire shall defend, indemnify and hold the County, its officers and employees harmless from and against any cost, loss, liability, damage, claim, action, suit or proceeding arising from or relating to any physical damage or personal injury caused by such entry and the negligent acts or omissions of Concessionaire or its employees, agents, or contractors in performing due diligence at the Properties; provided however, in no event shall Concessionaire be required to indemnify the County to the extent damage is related to or arising from the active or sole negligence, or willful misconduct of the County, its officers or employees.

4.3 Insurance. Concessionaire and its contractors, consultants, agents, and representatives shall

carry, maintain, and keep in full force and effect, with an insurance company authorized to do business in California (1) a policy or policies of broad-form comprehensive general liability insurance written on an occurrence basis with minimum limits of \$2,000,000.00 combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts by Concessionaire and its contractors, consultants, agents, and representatives and their respective officers, employees, agents, and independent contractors in performance of services under this Paragraph 4.3; (2) property damage insurance with a minimum limit of \$1,000,000.00; (3) automotive liability insurance, with minimum combined single limits coverage of \$1,000,000.00; and (4) worker's compensation insurance as required by law. County shall be added as an additional insured on the policy(ies) as to comprehensive general liability, property damage, automotive liability, and worker's compensation coverages, and such insurance shall include a waiver of subrogation. Concessionaire and its contractors, consultants, agents, and representatives shall deliver to County a copy of the certificates of insurance effectuating the insurance required hereunder, or such other evidence as County may reasonably require, prior to entry by Concessionaire and its contractors, consultants, agents, and representatives onto the Property, which certificates shall provide that such insurance shall not be terminated or modified without at least thirty (30) days' prior written notice to County.

Article 5 – Acknowledgements and Reservations

5.1 Need for DDA. The Parties acknowledge and agree that this Agreement is for the sole purpose of stating the intention of the Parties to negotiate and enter into one or more DDAs. Other than with respect to those provisions of this Agreement which expressly state the agreement of the Parties and to which the parties are bound, the Parties have not reached agreement on the matters described herein for negotiation, and do not intend to be bound unless and until one or more final written DDAs are executed by both Parties. This Agreement is merely an agreement to enter into a period of negotiations and due diligence according to the concepts presented herein.

5.2 No Further Obligations. The County and Concessionaire agree that neither the County nor Concessionaire shall be under any further obligation to each other regarding the Properties, the Project, or the development of the proposed concessions if this Agreement expires, is terminated for any reason, or a DDA is not executed by both the County and Concessionaire.

5.3 County Not Responsible for Costs. Except as otherwise may be mutually agreed to in writing by the Parties, as part of this Agreement or a DDA, the County shall not be liable for any costs associated with the preparation of any reports, studies, analysis, architectural plans, and any other documentation to be prepared by Concessionaire or its consultants or contractors, or planning or development of the Properties pursuant to or arising from this Agreement, or costs of negotiations or legal fees expended by Concessionaire.

5.4 Limitations of this Agreement. Nothing contained in this Agreement shall constitute a waiver, amendment, promise or agreement by the County (or any of its departments or boards) as to the granting of any approval, permit, consent, or other entitlement in the exercise of the County's regulatory capacity or function. Concessionaire acknowledges and agrees that no

County staff, consultant, or agent has the authority to bind the County, and the County will not be bound to any agreement nor to any course of action except after approval and execution of a DDA. The final form of any proposed DDA to be negotiated may contain matters not contemplated by this Agreement.

Article 6 – General Provisions.

6.1 Compliance with County Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use. Concessionaire hereby agrees to use commercially reasonable efforts 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. Concessionaire also agrees that it shall use commercially reasonable efforts to 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 August 23, 2005.

(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 Concessionaire 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 Board of Supervisors 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.

6.2 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.

6.3 Interpretation; Venue.

6.3.1 Interpretation. This Agreement shall be interpreted and governed by the laws of the State of California without regard to the choice of law or conflicts.

6.3.2 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.

6.3 Compliance with Laws. Concessionaire shall observe and comply with all applicable federal, state, and local laws, ordinances, and codes.

6.4 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.

6.5 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.

6.6 Counterpart and Facsimile Signatures. This Agreement may be signed in counterparts and by facsimile signatures, all of which when taken together shall constitute one and the same Agreement.

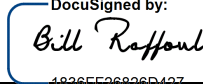
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IN WITNESS WHEREOF, this Agreement is executed by the County, acting by and through the Chair of the Board of Supervisors, and by Concessionaire through its duly authorized officer.

SUN LAKE BERRYESSA LLC, a Michigan limited liability company

By: Sun Communities Operating Limited Partnership, a Michigan limited partnership, its Sole Member

By: Sun Communities, Inc., a Maryland corporation, its General Partner

By:  4836FF26826D427...

NAME: Bill Raffoul
Authorized Representative

NAPA COUNTY, a political subdivision of the State of California

By: _____
ALFREDO PEDROZA, Chair
Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u> Interim County Counsel</p> <p>Date: <u>October 8, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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**AMENDMENT NO. 4
TO NAPA COUNTY AGREEMENT NO. 170664B-17**

PROFESSIONAL SERVICES AGREEMENT

THIS AMENDMENT NO. 4 to the Professional Services Agreement designated as Napa County Agreement No. 170664B-17 (Agreement) is made and entered into this _____ day of _____, 2021, by and between the Napa County (County), a political subdivision of the State of California, and Ragatz Realty (Contractor) whose mailing address is 767 Willamette Street, Suite 307, Eugene, Oregon 97401.

RECITALS

- A.** On December 6, 2016, County engaged the services of Contractor, as authorized by Government Code section 31000, to assist in transitioning the operation of concessions at Lake Berryessa from the federal Bureau of Reclamation (BOR) to the County.
- B.** Through the Agreement and three subsequent amendments, Contractor assisted the County in developing a Managing Agreement with BOR, preparing a Request for Proposals for concessions at the Spanish Flat, Steele Canyon, and Monticello Shores recreation areas, and reviewing responses received from potential concessions operators.
- C.** The County desires to assume operation of a fourth concession area at Lake Berryessa known as Berryessa Point, and needs Contractor's assistance in preparing a new Request for Proposals and reviewing proposals from potential concessionaires.
- D.** The County and Contractor desire to amend the Agreement to extend the term and increase the maximum contract amount by fifteen thousand dollars (\$15,000) for Contractor's continued assistance with concessions at Lake Berryessa;

NOW THEREFORE, for and in consideration of the recitals stated above and incorporated herein by this reference and the mutual obligations of the parties expressed herein, the County and the Contractor agree to amend the Agreement as follows:

AMENDMENT NO. 4

- 1. Paragraph 1, "Term of the Agreement" is amended to read in full as follows:

1. Term of the Agreement. The term of this Agreement shall commence on December 6, 2016 and shall expire on June 30, 2022, 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).

2. Paragraph 2, "Scope of Services," is amended to read in full as follows:

2. Scope of Services. Contractor shall provide the services set forth in Exhibit "A-3" for the Spanish Flat, Steele Canyon, and Monticello Shores recreation areas. Contractor shall further provide the services set forth in Exhibit "A-4" for the Berryessa Point recreation area.

3. Paragraph 3, "Compensation," is amended to read as follows:

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-3" attached hereto and hereby incorporated by reference.

(b) Expenses. Travel and other expenses, as approved by the County Executive Officer, will be reimbursed by the 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-3."

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement for professional services and for travel and all other expenses shall be a total of TWO HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$245,000); 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.

3. Exhibit "A-4" is attached to this amendment and hereby incorporated by reference as if fully set forth herein.

4. This amendment represents all the changes to the Agreement agreed to by County and Contractor. No enforceable oral representations or other agreements have been made by the parties except as specifically stated herein. All other provisions of the Agreement and prior amendments not addressed in this amendment shall remain in full force and effect.

5. This amendment may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, this Amendment No. 4 is executed by Napa County, acting by and through the Chair of the Board of Supervisors, and by the Contractor through its duly authorized officer.

RAGATZ REALTY, INC.



By _____
RICHARD RAGATZ, Chairman

NAPA COUNTY, a political subdivision of
the State of California

By _____
ALFREDO PEDROZA, Chair of the Board of
Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u> Interim County Counsel</p> <p>Date: <u>October 7, 2021</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors</p> <p>By: _____</p>
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EXHIBIT “A-4”

SCOPE OF WORK

Contractor shall provide the County with the following incremental services:

I. DESCRIPTION OF INCREMENTAL SERVICES

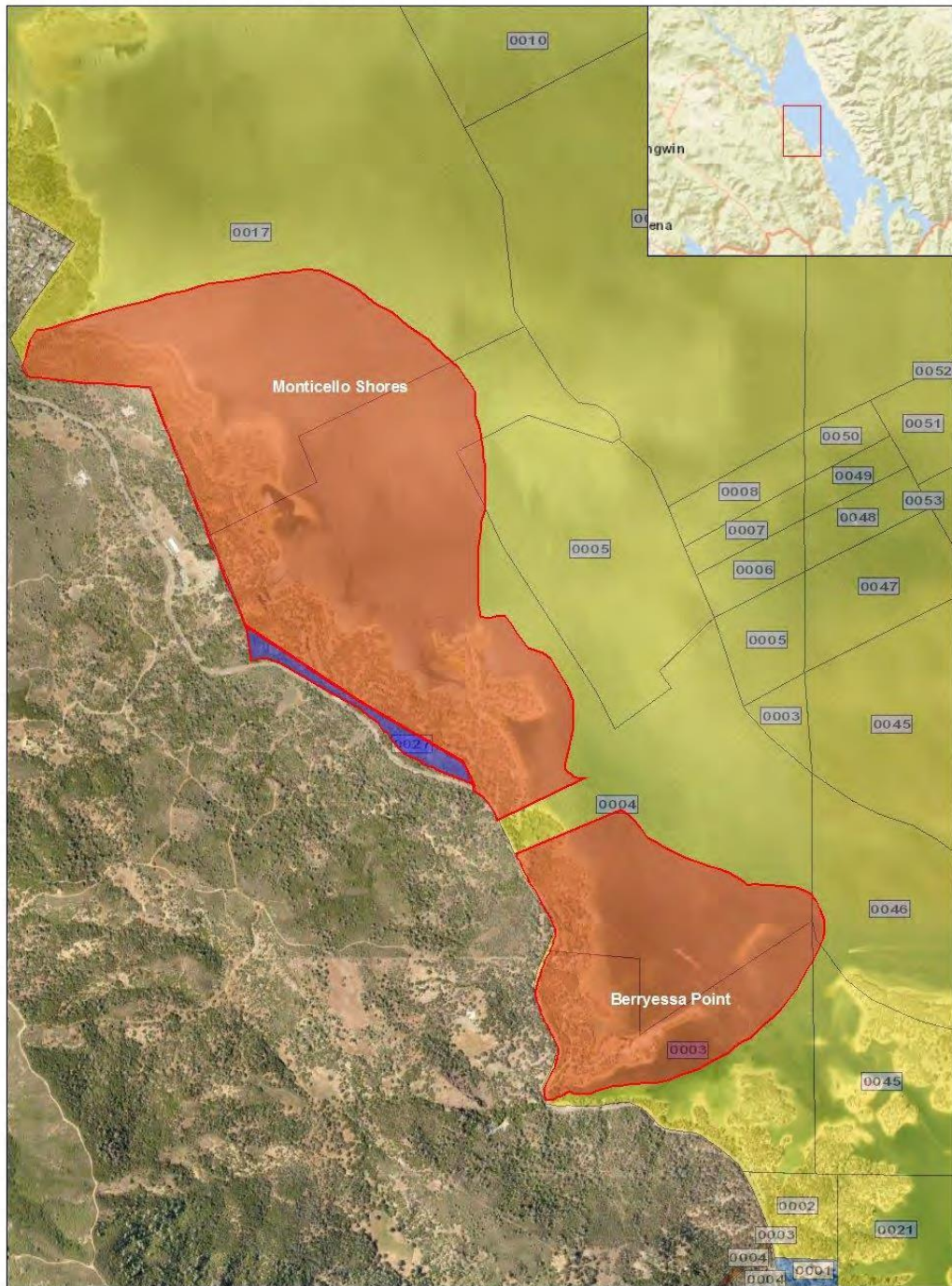
Contractor shall provide the County with on-site consulting and technical assistance services associated with the procurement of concession services for the Berryessa Point concession area. Contractor shall perform and carry out, in a satisfactory and proper manner as determined by the County, the following necessary services when directed by the County:

- Design and produce marketing materials to attract bidders and establish criteria for identifying eligible bidders.
- Collaborate with the County in the preparation of text and graphics for the Request for Proposals (RFP) document and take the lead marketing role in canvassing industry participants to encourage comprehensive proposals from qualified operators.
- Contractor will assist in the analysis of responses to the RFP and recommend one or more parties for negotiations, and
- Conduct due diligence investigation into the financial qualifications and relevant experience of the RFP finalist(s).



Monticello Shores and Berryessa Point

RECLAMATION
Managing Water in the West



Legend

Reclamation Owned Lands

- Fee
- Easement
- Withdrawn 1st Form
- Withdrawn 2nd Form
- Reclamation Zone Transfer Agreement

0 0.3 0.6 Miles



DISCLAIMER: This map and data are provided as-is and are intended for general reference only. None of the parties involved in preparing this map or data contained herein warrant or represent information to be complete and accurate.

Author:
Date: 7/25/2019



LAKE BERRYESSA – NAPA COUNTY, CA AVAILABLE CONCESSION AREAS
REQUEST FOR PROPOSAL
RFP CEO112001



Go To: www.rebrand.ly/sunRFP
to view this RFP digitally and to
watch our Concept Teaser Trailer.

GARY SHIFFMAN
CEO, SUN COMMUNITIES INC
Date of Submission: 2/26/2021

PROPOSED LESSEE:



Sun Communities, Inc.*
27777 Franklin Rd. Suite 200
Southfield, MI 48034
IRS EIN: 38-2730780
NYSE: SUI

Key Executives



Gary Shiffman
Chief Executive Officer



John McLaren
President and
Chief Operating Officer



Karen Dearing
Chief Financial Officer



Bruce Thelen
Executive Vice President

PRIMARY PROJECT CONTACTS

Bill Raffoul

Senior Vice President, Development
Sun Communities, Inc.
27777 Franklin Rd. Ste. 200
Southfield, MI 48034
T: 248-208-2606
Email: braffoul@suncommunities.com

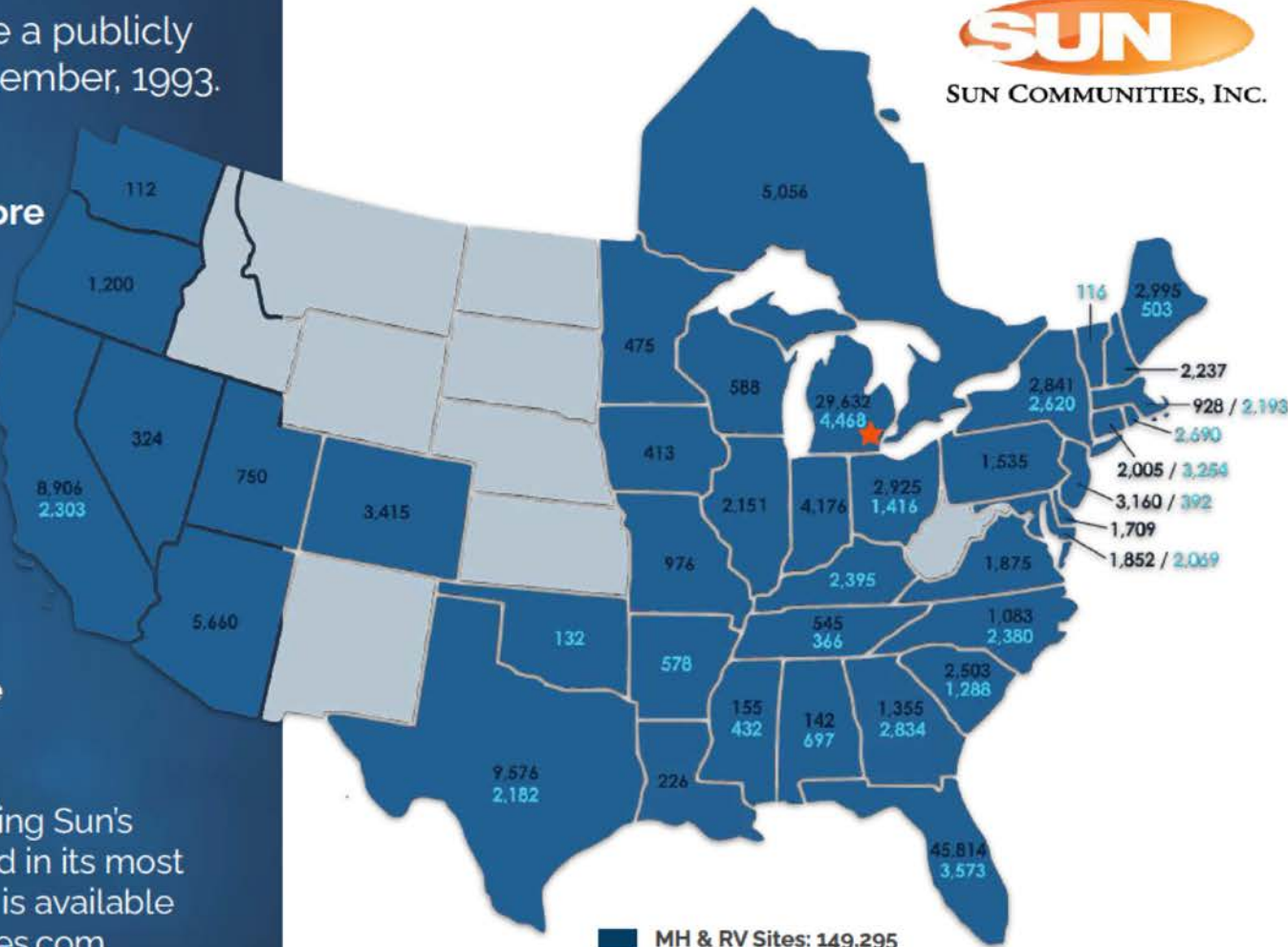
Kurt Beleck

Vice President – Program Management
Atwell, LLC
Two Town Square, Suite 700
Southfield, MI 48076
T: 248-447-2000
Email: kbeleck@atwell-group.com

Sun Communities became a publicly owned corporation in December, 1993.

As of December 31 2020, Sun owns and operates more than 552 Manufactured Housing Communities, RV Resorts and Marinas consisting of over 149,000 MH & RV sites and 38,881 marina slips & dry storage spaces located in 39 states and Ontario. The company is listed on the New York 'Stock Exchange under the symbol: SUI.

Additional information regarding Sun's corporate profile can be found in its most recent SEC Form 10-K, which is available online at www.suncommunities.com



★ HEADQUARTERS

MH & RV Sites: 149,295
Marina Wet Slips & Dry Storage Spaces: 38,881

TOTAL: 188,176
(MH, RV, Wet Slips & Dry Storage Spaces)

DEVELOPMENT EXPERIENCE



SUN COMMUNITIES, INC.

- ❑ For the last 25 years as a public company Sun has been the nation's leading developer of premiere manufactured housing communities and RV resorts.
- ❑ In the last 5 years, Sun has completed nearly \$1 billion in development projects, including numerous large scale developments throughout the country that have redefined the outdoor resort experience.
- ❑ Sun has demonstrated its competency and expertise in producing extraordinary concepts from ideation to execution. From inception of design, site plan approval, permitting, and constructing, Sun Communities provides innovative solutions which exceed the expectations of a diverse spectrum of community stakeholders.
- ❑ The following are examples of outdoor resort ground up development in Sun's portfolio completed since 2017.



Concept Overview:

Sun is pleased to propose 3 complimentary resort properties; each with its own distinct personality, amenities and activities.

**AT STEELE CANYON**

A family and pet friendly marina-based rustic glamping resort, packed with activities, dining, and retail for guests of all ages.

**AT SPANISH FLAT**

A luxury glamping resort with world-class amenities, relaxing activities, and intimate experiences with nature.

**AT MONTICELLO SHORES**

Two resorts in one: a family-friendly resort and adult-secluded retreat with RV camping options, luxury villa-pods, and stunning shoreline access throughout.

Protecting the environment while making nature more accessible, these properties are *designed to stand on their own or to be experienced together.*

Each property will provide a mix of RV camping, glamping, and lodging with up to 775 total sites collectively amongst all 3 concession areas (subject to feasibility analysis and approval). Additionally, Sun proposes up to 250 wet marina slips, and up to 200 dry storage marina slips at the Steele Canyon site (subject to feasibility analysis and approval).

Visitor Serving Facilities at the properties are consistent with the Visitor Serving Plan Record of Decision and will include:

MOTOR-BASED

- Full service marina at The Launch
- Boat Ramps & Launches at all properties
- Water Sports Equipment & Watercraft Rentals (Jet Skis, Water Skiing)
- Dry boat storage
- Wetslips
- Electric Boat Rentals @ the Outpost
- Electric Golf Cart Rentals @ the Shoreline
- Guest & Day-Use Parking

NATURE-BASED

- Hiking, biking, & walking trails
- Forestry & Conservation Center with wildlife overlook
- Protected Swim coves & beaches
- Fishing docks & equipment rental facilities
- Kayak, Canoe, & Paddleboard rental docks & self-guided tours
- Sailing School & Sailboat rentals
- Picnic & Grilling facilities

ACCOMMODATIONS

- Traditional RV Camping
- Glamping Pods & Tents
- Traditional Tent Camping
- Houseboat Rentals
- Park Model Rentals
- Upscale Cabin Rentals

COMMERCIAL ACTIVATIONS

- Boardwalk Shops & Dining
- Marketplace with groceries and camp / lake provisions
- Container Cafes & To-Go Restaurants
- Boutique retail shops for athletic clothing, local products, specialty wines & cheeses, etc.

- Wedding & Event lawn & venue
- Clubhouse pools
- Sailing School
- Water park & water slide
- Miniature Golf & Ropes Course
- Lake Berryessa Ferry, Water Taxi Service, & Dinner Cruises

- Floating Movies & Entertainment on the lake
- Night-time silent disco activations
- Dive Certification Center
- Arcade & Bowling
- Game & Activity Lawns
- Fitness Centers & Spas

**Property specific activations and additional details available on following slides & attachment / appendix*

**SUN OUTDOORS**

Each of the 3 properties is highly desirable with their own individual character which our concepts have been designed to integrate. Together we believe that the properties lend themselves to a unique vacation experience with inter-related programming between the properties.

STEELE CANYON:

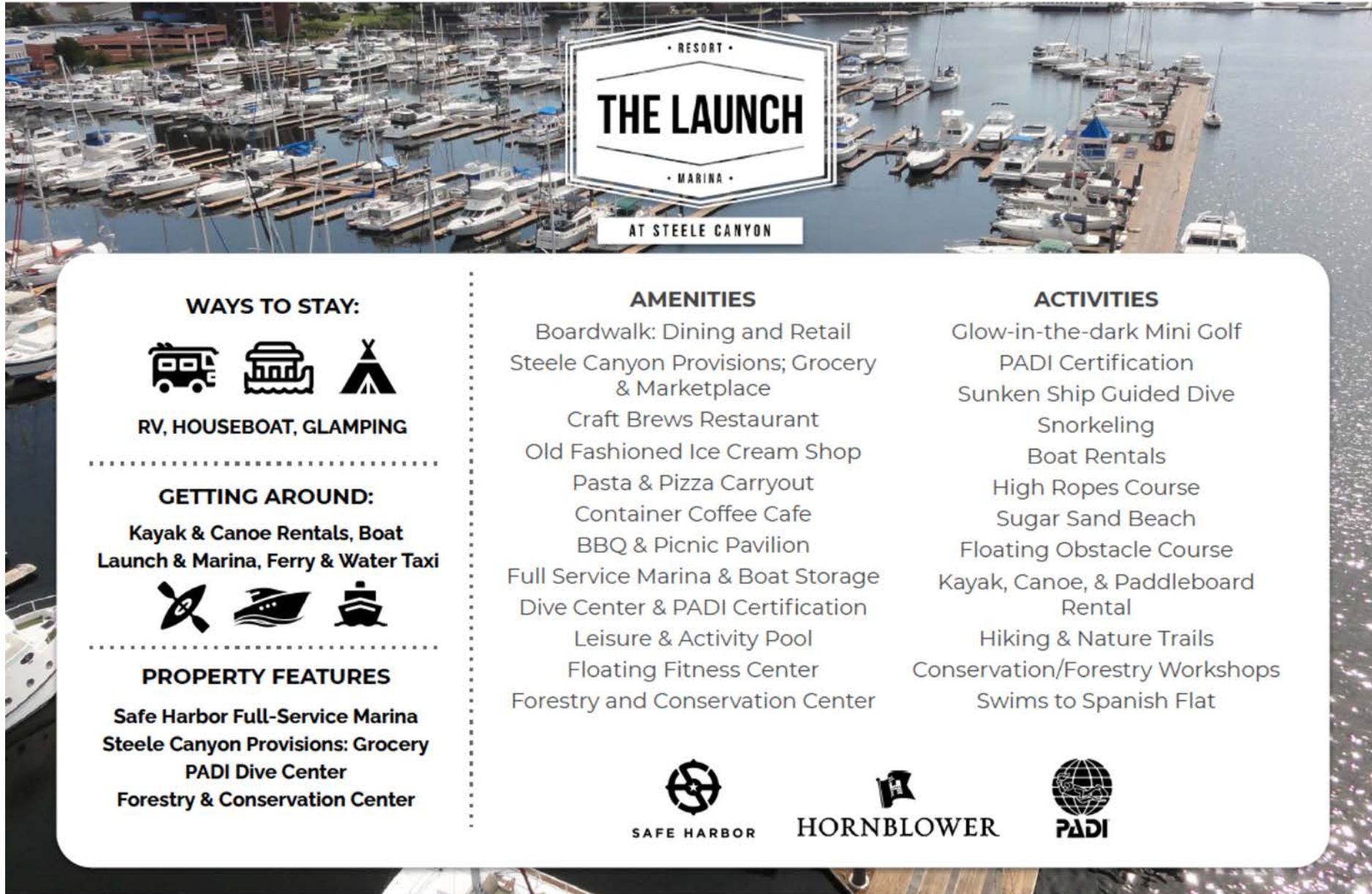
Steele canyon as the largest of the 3 sites and provides favorable topography, existing infrastructure, and the ability to support a larger format marina operation. The property lends itself well to our concept of making it the central hub of our complimentary concepts. We intend to take advantage of the developable space to provide a suite of activities while still preserving the natural beauty of the property.

SPANISH FLAT

Spanish Flat provides an opportunity to create a secluded and intimate environment for a boutique resort with an elevated service experience. By putting the region's first Outpost on the peninsula we plan to take advantage of the terrain by offering unique glamping pods with total immersion in nature experiences and water activations.

MONTICELLO SHORES

With over 2 miles of shoreline we plan exploit the opportunity to provide nearly all lodging options with beautiful water views. The long stretch of water access will be activated for traditional water activities and entertainment on the lake. The natural separation at the rock formation of a north and south shore lends itself to creating a more active area for families in the South and a more remote and quiet area for adults and couples in the North.



• RESORT •
THE LAUNCH
• MARINA •
AT STEELE CANYON

WAYS TO STAY:

RV, HOUSEBOAT, GLAMPING

GETTING AROUND:

Kayak & Canoe Rentals, Boat
Launch & Marina, Ferry & Water Taxi

PROPERTY FEATURES

Safe Harbor Full-Service Marina
Steele Canyon Provisions: Grocery
PADI Dive Center
Forestry & Conservation Center

AMENITIES

Boardwalk: Dining and Retail
Steele Canyon Provisions; Grocery
& Marketplace
Craft Brews Restaurant
Old Fashioned Ice Cream Shop
Pasta & Pizza Carryout
Container Coffee Cafe
BBQ & Picnic Pavilion
Full Service Marina & Boat Storage
Dive Center & PADI Certification
Leisure & Activity Pool
Floating Fitness Center
Forestry and Conservation Center

ACTIVITIES

Glow-in-the-dark Mini Golf
PADI Certification
Sunken Ship Guided Dive
Snorkeling
Boat Rentals
High Ropes Course
Sugar Sand Beach
Floating Obstacle Course
Kayak, Canoe, & Paddleboard
Rental
Hiking & Nature Trails
Conservation/Forestry Workshops
Swims to Spanish Flat





AT STEELE CANYON

DIFFERENT STAY OPTIONS @ The Launch



RV CAMPSITES



GLAMPING



HOUSEBOAT RENTALS

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
TOTAL SITES										
Total Available Sites	276	276	276	276	276	276	276	276	276	276
TRANSIENT RV GUEST SITE STATISTICS										
Season Days	365	365	365	365	365	365	365	365	365	365
RV - Available Sites	156	156	156	156	156	156	156	156	156	156
RV - Occupancy %	32%	38%	45%	52%	52%	52%	52%	52%	52%	52%
RV - Average Rate	\$ 91	\$ 94	\$ 98	\$ 102	\$ 106	\$ 110	\$ 115	\$ 119	\$ 124	\$ 129
ACCOMMODATIONS (PARK MODELS, CABINS, OTHER VACATION RENTAL UNITS) GUEST SITE STATISTICS										
Accommodations - Available Sites	120	120	120	120	120	120	120	120	120	120
Accommodations - Occupancy %	32%	38%	45%	53%	53%	53%	53%	53%	53%	53%
Accommodations - Avg. Rate	\$ 214	\$ 221	\$ 227	\$ 234	\$ 241	\$ 248	\$ 256	\$ 263	\$ 271	\$ 279
10 YEAR REVENUE PRO FORMA										
REVENUE										
RV Revenue	1,666,276	2,038,737	2,494,455	3,052,039	3,174,121	3,301,086	3,433,129	3,570,454	3,713,272	3,861,803
Accommodations Revenue	3,036,423	3,679,430	4,458,604	5,402,778	5,564,862	5,731,808	5,903,762	6,080,875	6,263,301	6,451,200
Total Site Revenue	4,702,699	5,718,168	6,953,059	8,454,818	8,738,983	9,032,893	9,336,891	9,651,329	9,976,573	10,313,003
Total Other/Ancillary Revenue	3,599,843	4,371,917	5,353,851	6,485,942	6,895,035	7,037,400	7,182,236	7,324,894	7,477,357	7,632,110
TOTAL REVENUE	8,302,542	10,090,085	12,306,910	14,940,760	15,634,018	16,070,293	16,519,127	16,976,223	17,453,930	17,945,114
Cost of Sales	1,343,862	1,604,434	1,915,927	2,288,622	2,340,665	2,390,975	2,442,467	2,491,958	2,542,456	2,593,980
Net Revenue	6,958,680	8,485,651	10,390,983	12,652,138	13,293,353	13,679,317	14,076,660	14,484,264	14,911,474	15,351,133
Total Operating Expenses	4,871,076	5,515,673	5,715,041	6,326,069	6,646,676	6,839,659	7,038,330	7,242,132	7,455,737	7,675,567
Management Fee	278,347	339,426	415,639	506,086	531,734	547,173	563,066	579,371	596,459	614,045
Concession Fee Payment	249,076	302,703	369,207	448,223	469,021	482,109	495,574	509,287	523,618	538,353
Reserve For Facility Improvement	249,076	302,703	369,207	448,223	469,021	482,109	495,574	509,287	523,618	538,353
Net Operating Income	1,311,104	2,025,147	3,521,888	4,923,538	5,176,901	5,328,268	5,484,116	5,644,188	5,812,042	5,984,814



AT SPANISH FLAT

WAYS TO STAY:



GLAMPING

GETTING AROUND:

Kayak & Canoe Rentals, Electric Boat Marina, Ferry & Water Taxi



PROPERTY FEATURES

Lookout Tower & Restaurant
RAND Electric Boat Marina
Wedding & Event Space
Protected Swim Only Cove



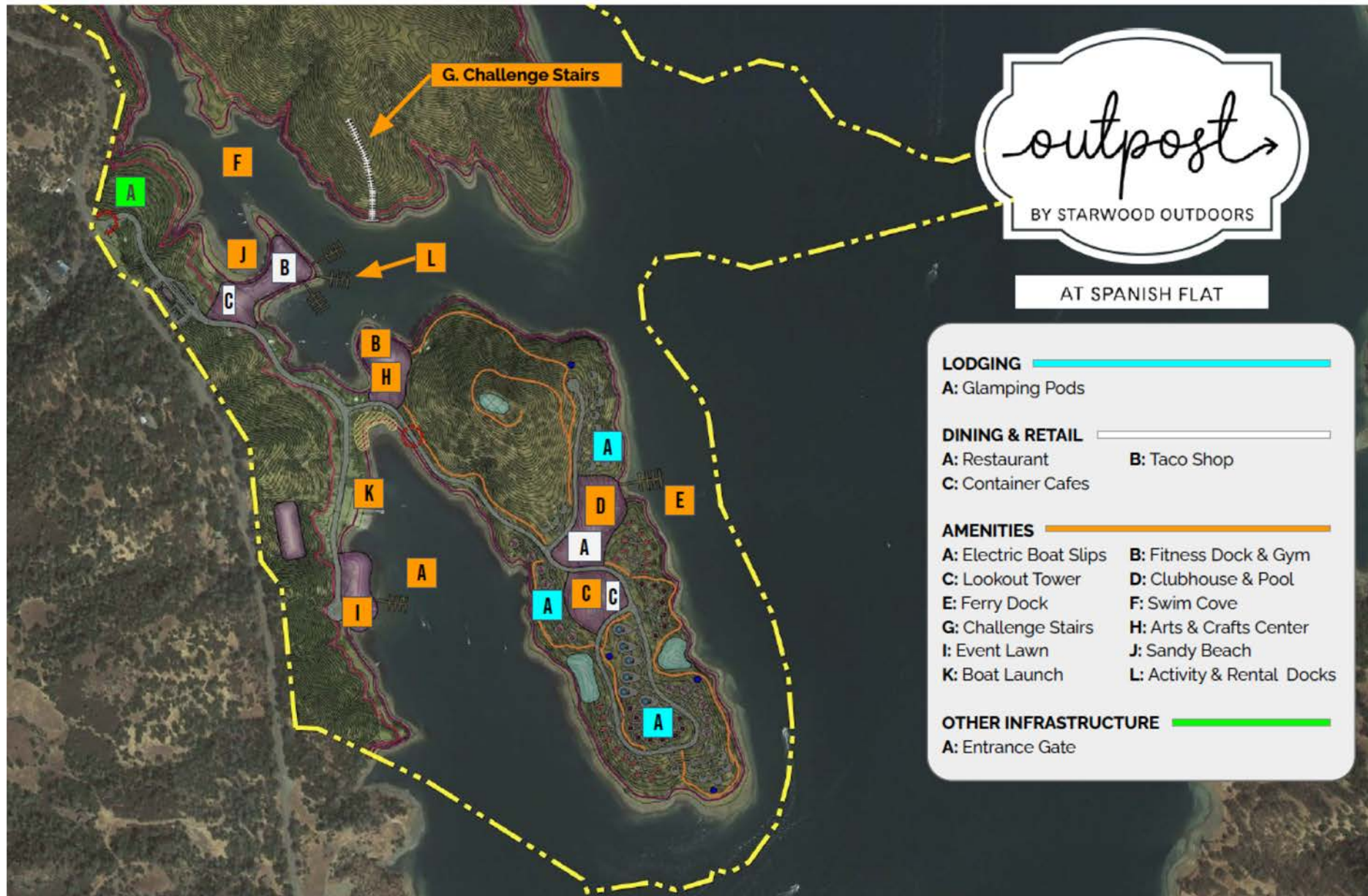
Amenities

Lookout Tower & Sunset Restaurant
Star Gazing Deck
Clubhouse, Infinity Pool, & Swim Up Bar
Electric Boat Marina & Rentals
Hillside Therapeutic Soaking Tubs
Fitness Center & Wellness Spa
Room Service/Housekeeping

Activities

Creative Center
Taco Shop & Wood Fired Pizza
Container Coffee Cafe
Sunrise / Sunset Outdoor Yoga
Challenge stairs
Sandy Beach & Adventure Cove
Special Event & Wedding Lawn
Protected Swim Only Cove
Swim & Activity Dock
Hiking Trails & Nature Trails
Wellness Expeditions
Swims to Steele Canyon







PRO FORMA OVERVIEW: The Outpost at Spanish Flat

RFP CRITERIA D

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
TOTAL SITES										
Total Available Sites	79	79	79	79	79	79	79	79	79	79
TRANSIENT RV GUEST SITE STATISTICS										
Season Days	245	245	245	245	245	245	245	245	245	245
RV - Available Sites	-	-	-	-	-	-	-	-	-	-
RV - Occupancy %	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
RV - Average Rate	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
ACCOMMODATIONS (PARK MODELS, CABINS, OTHER VACATION RENTAL UNITS) GUEST SITE STATISTICS										
Accommodations - Available Sites	79	79	79	79	79	79	79	79	79	79
Accommodations - Occupancy %	47%	56%	67%	67%	67%	67%	67%	67%	67%	67%
Accommodations - Avg. Rate	\$ 347	\$ 368	\$ 390	\$ 414	\$ 439	\$ 465	\$ 493	\$ 522	\$ 554	\$ 587
10 YEAR REVENUE PRO FORMA										
REVENUE										
RV Revenue	-	-	-	-	-	-	-	-	-	-
Accommodations Revenue	3,161,288	3,989,244	5,034,046	5,336,089	5,656,254	5,995,629	6,355,367	6,736,689	7,140,890	7,569,344
Total Site Revenue	3,161,288	3,989,244	5,034,046	5,336,089	5,656,254	5,995,629	6,355,367	6,736,689	7,140,890	7,569,344
Total Other/Ancillary Revenue	2,602,255	3,159,880	3,836,998	3,913,738	3,992,012	4,071,853	4,153,290	4,236,356	4,321,083	4,407,504
TOTAL REVENUE	5,763,542	7,149,124	8,871,043	9,249,826	9,648,266	10,067,482	10,508,657	10,973,044	11,461,973	11,976,848
Cost of Sales	487,607	592,095	718,972	733,352	748,019	762,979	778,239	793,803	809,679	825,873
Net Revenue	5,275,935	6,557,030	8,152,071	8,516,475	8,900,248	9,304,503	9,730,418	10,179,241	10,652,293	11,150,975
Total Operating Expenses	5,275,935	5,573,475	5,298,846	5,535,708	5,785,161	6,047,927	6,324,772	6,616,507	6,923,991	7,248,134
Management Fee	211,037	262,281	326,083	340,659	356,010	372,180	389,217	407,170	426,092	446,039
Concession Fee Payment	172,906	214,474	266,131	277,495	289,448	302,024	315,260	329,191	343,859	359,305
Reserve For Facility Improvement	172,906	214,474	266,131	277,495	289,448	302,024	315,260	329,191	343,859	359,305
Net Operating Income	(556,850)	292,326	1,994,879	2,085,118	2,180,181	2,280,347	2,385,910	2,497,182	2,614,493	2,738,191



WAYS TO STAY:



RV, GLAMPING, PARK MODELS

GETTING AROUND:

Kayak & Canoe Rentals, Ferry & Water Taxi, EV Golf Carts



PROPERTY FEATURES

Sailing School
Picnic Shop
Outdoor Pizza Kitchen
Floating Entertainment



AMENITIES

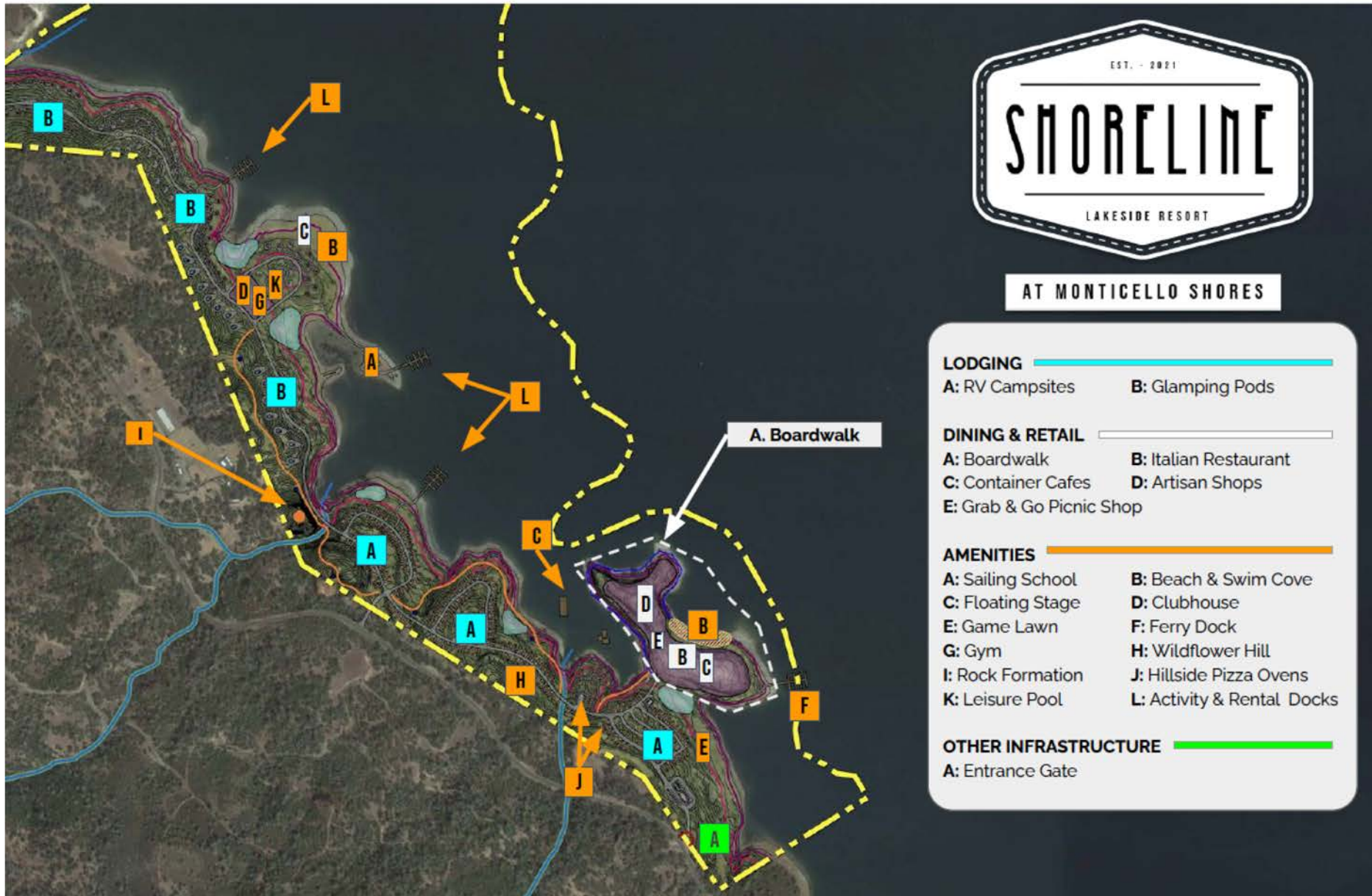
Boardwalk Dining & Artisan Retail Shops
Clubhouse with Bowling Alley, Arcade, & Leisure Pool
Floating Music & Movies on the Lake
DIY Pizza & Pasta Workshops
Outdoor Pizza Oven Kitchen
Grab & Go Picnic Shop
Sculpture Garden
Wildflower Hill
Activity Rental Dock
Sailing School
Electric Vehicle Rental Center

ACTIVITIES

Lawn Games
Bocce Ball & Horse Shoes
Sailing Classes & Sailboat Rentals
Kayaks, Canoes & Paddleboard Rentals
Electric Bike & Scooter Rentals
Outdoor Pizza Classes
Rainy Day Indoor Activities
Nature Walks & Hikes
Shopping & Dining
Sandy Beach
Picnicking



HORNBLOWER





AT MONTICELLO SHORES

NORTH
SHORE:



PARK MODELS



GLAMPING "VILLAS"

SOUTH
SHORE:



RV CAMPSITES



GLAMPING




LAKEVIEW STAY OPTIONS

PRO FORMA OVERVIEW: The Shoreline at Monticello Shores

RFP CRITERIA D

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
TOTAL SITES										
Total Available Sites	325	325	325	325	325	325	325	325	325	325
TRANSIENT RV GUEST SITE STATISTICS										
Season Days	365	365	365	365	365	365	365	365	365	365
RV - Available Sites	201	201	201	201	201	201	201	201	201	201
RV - Occupancy %	32%	38%	45%	52%	52%	52%	52%	52%	52%	52%
RV - Average Rate	\$ 91	\$ 94	\$ 98	\$ 102	\$ 106	\$ 110	\$ 115	\$ 119	\$ 124	\$ 129
ACCOMMODATIONS (PARK MODELS, CABINS, OTHER VACATION RENTAL UNITS) GUEST SITE STATISTICS										
Accommodations - Available Sites	124	124	124	124	124	124	124	124	124	124
Accommodations - Occupancy %	32%	38%	45%	53%	53%	53%	53%	53%	53%	53%
Accommodations - Avg. Rate	\$ 214	\$ 221	\$ 227	\$ 234	\$ 241	\$ 248	\$ 256	\$ 263	\$ 271	\$ 279
10 YEAR REVENUE PRO FORMA										
REVENUE										
RV Revenue	2,146,932	2,626,835	3,214,010	3,932,435	4,089,733	4,253,322	4,423,455	4,600,393	4,784,409	4,975,785
Accommodations Revenue	3,137,637	3,802,078	4,607,224	5,582,871	5,750,357	5,922,868	6,100,554	6,283,571	6,472,078	6,666,240
Total Site Revenue	5,284,569	6,428,913	7,821,233	9,515,306	9,840,090	10,176,190	10,524,009	10,883,964	11,256,486	11,642,025
Total Other/Ancillary Revenue	3,010,693	3,612,832	4,335,399	5,202,478	5,306,528	5,412,658	5,520,912	5,631,330	5,743,956	5,858,836
TOTAL REVENUE	8,295,263	10,041,745	12,156,632	14,717,785	15,146,618	15,588,848	16,044,920	16,515,293	17,000,443	17,500,861
Cost of Sales	1,290,218	1,548,262	1,857,915	2,229,497	2,274,087	2,319,569	2,365,961	2,413,280	2,461,545	2,510,776
Net Revenue	7,005,044	8,493,483	10,298,717	12,488,287	12,872,530	13,269,279	13,678,960	14,102,014	14,538,898	14,990,084
Total Operating Expenses	4,903,531	5,520,764	5,664,295	6,244,144	6,436,265	6,634,640	6,839,480	7,051,007	7,269,449	7,495,042
Management Fee	280,202	339,739	411,949	499,531	514,901	530,771	547,158	564,081	581,556	599,603
Concession Fee Payment	248,858	301,252	364,699	441,534	454,399	467,665	481,348	495,459	510,013	525,026
Reserve For Facility Improvement	248,858	301,252	364,699	441,534	454,399	467,665	481,348	495,459	510,013	525,026
Net Operating Income	1,323,596	2,030,475	3,493,076	4,861,545	5,012,567	5,168,538	5,329,626	5,496,009	5,667,866	5,845,387

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
TOTAL SITES										
Total Available Sites	680	680	680	680	680	680	680	680	680	680
TRANSIENT RV GUEST SITE STATISTICS										
RV - Available Sites	357	357	357	357	357	357	357	357	357	357
RV - Occupancy %	32%	38%	45%	52%	52%	52%	52%	52%	52%	52%
RV - Average Rate	\$ 91	\$ 94	\$ 98	\$ 102	\$ 106	\$ 110	\$ 115	\$ 119	\$ 124	\$ 129
ACCOMMODATIONS (PARK MODELS, CABINS, OTHER VACATION RENTAL UNITS) GUEST SITE STATISTICS										
Accommodations - Available Sites	244	244	244	244	244	244	244	244	244	244
Accommodations - Occupancy %	32%	38%	45%	51%	51%	51%	51%	51%	51%	51%
Accommodations - Avg. Rate	\$ 246	\$ 256	\$ 267	\$ 273	\$ 284	\$ 295	\$ 307	\$ 319	\$ 332	\$ 346
10 YEAR REVENUE PRO FORMA										
REVENUE										
RV Revenue	3,813,208	4,665,572	5,708,465	6,984,475	7,263,853	7,554,408	7,856,584	8,170,847	8,497,681	8,837,588
Accommodations Revenue	9,335,348	11,470,752	14,099,873	16,321,738	16,971,473	17,650,305	18,359,683	19,101,134	19,876,269	20,686,784
Total Site Revenue	13,148,556	16,136,324	19,808,338	23,306,213	24,235,326	25,204,712	26,216,267	27,271,982	28,373,950	29,524,372
Total Other/Ancillary Revenue	9,212,791	11,144,630	13,526,247	15,602,158	16,193,576	16,521,911	16,856,437	17,192,579	17,542,396	17,898,450
TOTAL REVENUE	22,361,346	27,280,954	33,334,585	38,908,371	40,428,902	41,726,623	43,072,704	44,464,561	45,916,346	47,422,822
Cost of Sales	3,121,687	3,744,791	4,492,813	5,251,471	5,362,771	5,473,524	5,586,666	5,699,042	5,813,681	5,930,630
Net Revenue	19,239,659	23,536,163	28,841,772	33,656,900	35,066,131	36,253,099	37,486,038	38,765,519	40,102,665	41,492,193
Total Operating Expenses	15,050,542	16,609,912	16,678,181	18,105,921	18,868,102	19,522,225	20,202,582	20,909,646	21,649,176	22,418,742
Management Fee	769,586	941,447	1,153,671	1,346,276	1,402,645	1,450,124	1,499,442	1,550,621	1,604,107	1,659,688
Concession Fee Payment	670,840	818,429	1,000,038	1,167,251	1,212,867	1,251,799	1,292,181	1,333,937	1,377,490	1,422,685
Reserve For Facility Improvement	670,840	818,429	1,000,038	1,167,251	1,212,867	1,251,799	1,292,181	1,333,937	1,377,490	1,422,685
Net Operating Income	2,077,850	4,347,947	9,009,844	11,870,201	12,369,649	12,777,153	13,199,652	13,637,379	14,094,401	14,568,393

	 AT STEELE CANYON	 AT SPANISH FLAT	 AT MONTICELLO SHORES	TOTAL
RV, Tent Camping, Rustic Cabin & Glamping Sites (As Presented)	276	79	325	680
Commercial Marina Slips (Wet and Dry Combined)	450	0	0	450
Proposed Investment in Site Development, Infrastructure & Amenities	\$59,500,000	\$20,200,000	\$53,300,000	\$133,000,000
Proposed Investment in Cabins, Glamping Units, and FF&E	15,000,000	12,000,000	15,500,000	42,500,000
Total Estimated Investment	74,500,000	32,200,000	68,800,000	175,500,000

*The site mix above is representative of the enclosed preliminary site plans and pro forma estimates. Sun requests the ability to build up to 775 total RV, Cabin, and Glamping Sites in total amongst all 3 concession areas if physically feasible and allowable within regulatory and environmental requirements.

Based on the enclosed Pro Forma Projections, concession payments to The County are estimated below for the first 10 years, and cumulative over a 50 year period. The present value for 50 year cumulative lease payments has been calculated using a 1.9% and 4% discount rate consistent with the sensitivity analysis' presented in the Financial Feasibility Investment Report enclosed in the RFP.

Concession Year	The Launch Gross Revenue	The Outpost Gross Revenue	Shoreline Gross Revenue	Consolidated Gross Revenue	Concession %	The Launch Concession Payment	The Outpost Concession Payment	Shoreline Concession Payment	Consolidated % Concession Payment
Construction				-	0.0%	-	-	-	-
Construction				-	0.0%	-	-	-	-
1	8,302,542	5,763,542	8,295,263	22,361,346	3.0%	249,076	172,906	248,858	670,840
2	10,090,085	7,149,124	10,041,745	27,280,954	3.0%	302,703	214,474	301,252	818,429
3	12,306,910	8,871,043	12,156,632	33,334,585	3.0%	369,207	266,131	364,699	1,000,038
4	14,940,760	9,249,826	14,717,785	38,908,371	3.0%	448,223	277,495	441,534	1,167,251
5	15,634,018	9,648,266	15,146,618	40,428,902	3.0%	469,021	289,448	454,399	1,212,867
6	16,070,293	10,067,482	15,588,848	41,726,623	3.0%	482,109	302,024	467,665	1,251,799
7	16,519,127	10,508,657	16,044,920	43,072,704	3.0%	495,574	315,260	481,348	1,292,181
8	16,976,223	10,973,044	16,515,293	44,464,561	3.0%	509,287	329,191	495,459	1,333,937
9	17,453,930	11,461,973	17,000,443	45,916,346	3.0%	523,618	343,859	510,013	1,377,490
10	17,945,114	11,976,848	17,500,861	47,422,822	3.0%	538,353	359,305	525,026	1,422,685

PROJECTED CUMULATIVE LEASE VALUE

50 Year Total Lease Payments **\$158,306,021**

Present Value @ 1.9% Discount Rate **\$86,790,289**

Present Value @ 4% Discount Rate **\$48,903,573**

Sun is committed to ensuring a safe, secure and healthy environment for our guests, team members and community. Sun will at a minimum provide for the following Security protocols:



Properties will be developed with guard gated access points to screen and limit access to the Property.



Sun will provide 24 hour a day roving ranger staff and a Manager that lives onsite.



Sun will install state of the art security and surveillance equipment for monitoring the property.



Sun will ensure detailed emergency preparedness plans are developed for each site and will train staff members on emergency response protocols.



Sun will undertake to comply with any health safety precautions and/or regulations regarding COVID-19 as are published, from time to time, by the County Health Officials.



Sun will work with Napa County to determine impacts on public services including law enforcement and will work with the County to provide collaborative solutions as part of the contract negotiation.

Over The Top Media Video Ad Plays

- Connected TV
- Instream & Outstream Video
- YouTube
- Streaming Radio
- Podcasts

Visit Napa Valley Engagement

- Print
- Digital
- E-Mail

Search Engine Marketing & Dynamic Display

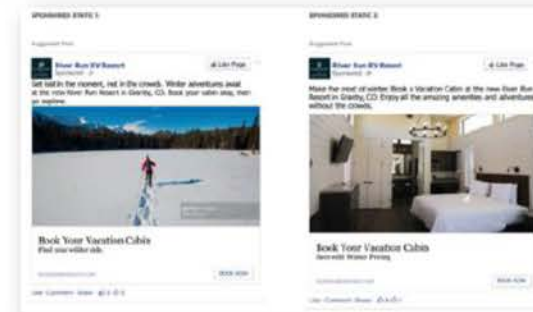
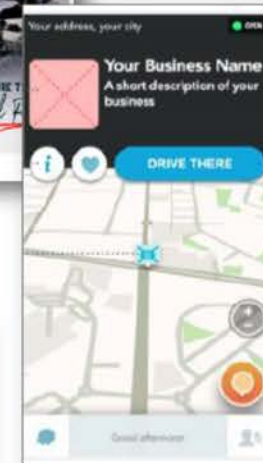
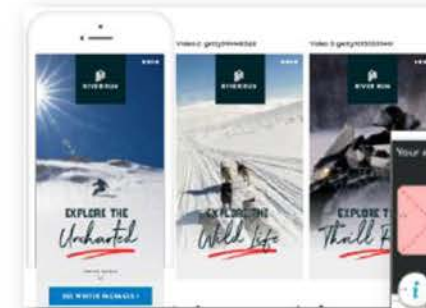
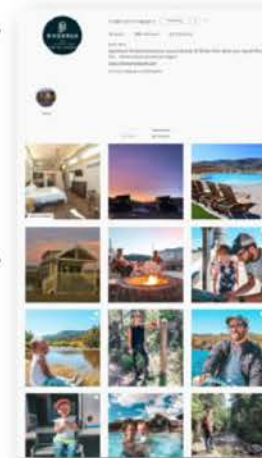
- Professional SEO
- Geofencing
- Ad Group Targeting
- Display & Remarketing

Social Media

- Influencer Marketing
- Serial Posting
- Facebook
- Instagram
- Youtube

Billboards

- Physical Locations - Major Arterials
- Digital Billboards via Waze



Our community engagement strategy is focused across 3 key areas:



CONCEPT FEEDBACK SOLICITATION

Sun will proactively communicate with local residents and stakeholders throughout the design and approval process to build community consensus around the proposed development plan



HIRING VENDORS AND KEY PERSONNEL FROM THE LOCAL COMMUNITY

Every effort will be used to engage the local community and source talent to support the construction, maintenance and ongoing management of all aspects of the property.

- Construction and Maintenance
- contractors
- vendors/suppliers
- team members



COLLABORATIONS WITH LOCAL BUSINESSES; WINERIES, LOCAL CHEFS, GALLERIES

- excursions to neighboring wineries will be offered at each property
- wine and cheese tastings in conjunction with wineries
- visiting chef dinners
- local produce providers
- artisans and manufacturers
- Steele Canyon Provisions marketplace will be stocked with local products

Sun has been committed to partnering with Napa County to develop the concession areas since the original RFI was released in 2017. Sun responded enthusiastically to the RFI information request with interest in developing all 5 sites offered at that time. Sun remains fully invested in the opportunity transform the Lake Berryessa community and we believe our proposal today only expands upon the vision initially expressed in our RFI Response.

Sustainable design is at the heart of each of Sun Outdoors' resorts. We are deeply committed to the preservation of the natural world, and strive to do everything possible to offset our collective carbon footprint and protect the one planet we call home. We have implemented a wide range of energy, water, and environmental design strategies to keep our footprint small, and we consistently use sustainable building materials and practices both at Outpost as well as at each of the other hotels in our family of sustainable brands.

By encouraging guests to travel between resort properties via ferry, water taxi, and electric boats we aim to reduce auto traffic in the region while encouraging an intimate and one-of-a-kind multi-property experience for guests.



THANK YOU



SUN OUTDOORS



A Tradition of Stewardship
A Commitment to Service

County Executive Office

1195 Third Street
Suite 310
Napa, CA 94559
www.co.napa.ca.us

Main: (707) 253-4421
Fax: (707) 253-4176

Minh C. Tran
County Executive Officer

MEMORANDUM

To: Board of Supervisors	From: Helene Franchi
Date: October 18, 2021	Re: BOS Agenda for October 19, 2021 Administrative Item 11 B

The Recommendation incorrectly identified the amendment with Ragatz Realty as Amendment No. 2.; the correct number is Amendment No. 4 to Agreement No. 170664B-17. In addition, staff would like Board approval to take over management of Berryessa Point from the Bureau of Reclamation. As the report states in the background, the site was not included initially but has garnered interest because of its size and location. Staff believes there are now opportunities for development.

Cc: Minh C. Tran
Thomas C. Zeleny
Leigh Sears



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1083

TO: Board of Supervisors
FROM: Minh C. Tran, County Executive Officer
REPORT BY: Jennifer Palmer, Director of Housing & Homeless Services
SUBJECT: Project Homekey Round 2 Loan Request

RECOMMENDATION

SUPPLEMENTAL ITEM

Director of Housing and Homeless Services and County Executive Officer request discussion and direction regarding a proposal by Burbank Housing to develop supportive and affordable permanent housing at the Wine Valley Lodge facility for individuals experiencing or at-risk of experiencing homelessness that would require the following uses of American Rescue Plan Act Funds and Affordable Housing Trust Funds if a Project Homekey Round 2 Application is approved:

1. Approval of a loan to Burbank Housing in the amount of \$2 million from the State and Local Fiscal Recovery Fund - American Rescue Plan Act allocation to be used for capital costs of acquisition and development of Wine Valley Lodge through a Project Homekey Round 2 grant award;
2. Approval of a Fund Balance Assignment of \$2 million in State and Local Fiscal Recovery Fund (Fund 2460 - Subdivision 1020050), for the capital acquisition loan;
3. Approval of a loan to Burbank Housing of an amount not to exceed \$2 million from the Affordable Housing Trust Fund to serve as a guarantee for a Capitalized Operating Subsidy Reserve as required by the Project Homekey Round 2 grant application; and
4. Approval of a Fund Balance Assignment of \$2 million of Affordable Housing Trust Fund (Fund 2080 - Subdivision 2080010), for the operating subsidy loan guarantee.

EXECUTIVE SUMMARY

Project Homekey ("Homekey") is a State program whose purpose is to expand the inventory of housing available for individuals at-risk of or experiencing homelessness. Homekey provides funds to state, regional, and local public entities to support the development of a broad range of housing types, and to convert commercial properties and other existing buildings to Permanent or Interim Housing. Project Homekey Round 2 ("Homekey R2") became available in September 2021 and makes available approximately \$1.45 billion in

grant funds available to support the development of such housing resources.

Burbank intends to submit an application for Homekey R2 funding for the long-term (55-year) lease of Wine Valley Lodge and conversion of the facility to permanent housing for very low income (30% Area Median Income or “AMI”) affordable housing. The City of Napa will be the co-applicant, and if approved by the State, all funds would go directly to Burbank from the State. Burbank is seeking Affordable Housing Impact Fee funding from the City of Napa and is requesting this additional funding from Napa County in order to best position the project to be competitive in the Bay Area allocation pool. Burbank has committed to seek other funding to eliminate or lessen the need for a loan requested from Napa County, but due to timing and the importance of this project to the community, is requesting the Board of Supervisors lend County support through both a direct loan and a guarantee against the Capitalized Operating Subsidy Reserve (“COSR”).

If a Homekey R2 application is approved for the project, staff will return to the Board of Supervisors at a future meeting to request appropriation for the approved funding sources and execute loan documents for the project.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	This item is discretionary in that there is no mandate to submit a grant application for Homekey R2. The loan funds requested would be conditioned on a successful application/award for Homekey R2 by Burbank and the City of Napa (as a joint applicant). The project, if awarded Homekey R2 funding, will result in 55 deed restricted very-low-income affordable housing units for clients exiting homelessness.
Is the general fund affected?	No
Future fiscal impact:	The loans will be accounted for in future fiscal years based on the terms which will be negotiated upon award of Homekey R2 funds and other grants.
Consequences if not approved:	If this item is not approved, Burbank will not have the necessary local capital and operating subsidy match to best position their application for the regional competitive award of Homekey R2 funds.
County Strategic Plan pillar addressed:	Healthy, Safe, and Welcoming Place to Live, Work, and Visit

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.

BACKGROUND AND DISCUSSION

Homekey R2 Overview

Homekey R2 makes available approximately \$1.45 billion in grant funds to Cities, Counties or other local public entities (like Housing Authorities) in California. The intent of Homekey R2 is for state, regional, and local public entities to utilize the funding for the development of a broad range of housing types, including hotels, motels, hostels, single- family homes and multifamily apartments, adult residential facilities, and manufactured housing, and to convert commercial properties and other existing buildings to Permanent or Interim Housing and in so doing expand the inventory of housing available for individuals at-risk of or experiencing homelessness.

The Homekey R2 Notice of Funding Availability (“NOFA”) was released on September 9, 2021 and the Homekey R2 Application became available the last week of September. Applications are accepted on an over-the-counter rolling basis until funds are exhausted or May 2, 2022, whichever comes first. The Bay Area funding set-aside is expected to be extremely competitive.

Local Homekey R2 Opportunity: Wine Valley Lodge

Wine Valley Lodge is a 55-unit motel made up of 54 guest rooms and 1 managers unit. The County of Napa has continuously leased this site for pandemic-related Isolation & Quarantine Sheltering and Non-Congregate Prevention Sheltering since March of 2020. The owner of the Lodge has expressed an interest in a long-term lease of the property but is unwilling to outright sell it. Burbank has negotiated an MOU for a 55-year lease of the facility, to provide 54 units of very-low-income (30% AMI or below) housing for individuals exiting homelessness, and one unrestricted managers unit. All prospective tenants will be referred through the Napa City-County Continuum of Care Coordinated Entry System (CES). The plan for converting the existing property to permanent housing includes remodeling each individual room to become a studio unit, or single room occupancy (SRO) unit, by installing efficiency kitchens in each unit, creating ADA accessible units, having full-time, live-on-site facility management, and onsite supportive services.

Local Application Timing and Details

The Bay Area Homekey R2 funding allocation is expected to be extremely competitive. In order to best position a local project for funding in this round, Burbank is working toward an application submission deadline of October 31, 2022. The City of Napa will be the co-applicant, and if approved by the State, all funds would go directly to Burbank from the State.

The project is likely to require approximately \$21.2 million to fund. This translates to a per-unit cost of \$400,000 per unit. For comparison, the per-unit cost for Heritage House units, a project similar in unit count to this one, is closer to \$625,000. Included in the proforma is a mandatory 5-year operating reserve.

The maximum amount of Homekey R2 funding a project can receive is calculated based using a baseline of \$150,000 per door, with additional funds available based upon a number of factors which include “bonus” and matching awards based on various performance targets (length of time from award to occupancy, early application submission, and additional funds if the project can show local-funding for the operating subsidy.)

Burbank is seeking to qualify for all of those bonus allocations.

The application is on track for submission by the end of this month, which is likely to lead to a notice of award in January. Construction is anticipated to complete within 8 months of award, and makes occupancy likely September 2022. There would be a period of time between when Burbank takes possession of the facility (January 2022) and when actual construction begins (April/May 2022) when the County would be able to continue IQ operations and/or Project Roomkey under contract with Burbank if still needed.

Request for Funding

The total amount of funding Burbank requires for the conversion of Wine Valley Lodge to permanent housing, including a five year operating subsidy reserve, is \$21.2 million. Their Homekey R2 application will seek more than 50% of those funds from the State. In addition, Burbank has submitted an application to the City of Napa, and the Napa City Council will vote on a recommendation to commit Affordable Housing Impact Fee funds to the project at their 10/19/2021 meeting. They have also secured a Wells Fargo Accelerator Grant.

Burbank is requesting two commitments of funding from the County: The first is \$2 million from the State and Local Fiscal Recovery Fund - American Rescue Plan Act allocation to be used for capital costs of acquisition and development of Wine Valley Lodge through the Homekey R2 grant award to Napa County. The second is for up to \$2 million from the Affordable Housing Trust Fund to be used for a Capitalized Operating Subsidy Reserve (COSR) "local funding guarantee" as required by the Homekey R2 grant application.

The second request for the COSR guarantee is needed due to the timing of the Homekey R2 NOFA and the nature of the first-come-first-serve funding which demand a rapid turn-around on the application. The compressed timing does not allow Burbank to pursue formal commitments or grants from other possible funders, specifically healthcare partners with vested interest in the long-term health benefits of this project for their members. However, there are several known funding sources available or expected to be available in the coming months, including:

- CalAIM "ILOS (aka, Community Supports) Incentive Funds." These funds will be available from the State through Partnership Health Plan (PHP). PHP will be working through their spending proposals and award process in the near future and will then announce and open their grant award opportunity.
- CMS "Home and Community-Based Services (HCBS) Funds." At this time, these funds are partially approved by CMS and managed care plans (including PHP) are awaiting more details expected to be available in late November/early December.
- St. Joseph Health ("SJH") "Community Partnership Funds." Each year SJH allocates 10% of its net income (net unrealized gains and losses) to the SJH Community Partnership Fund. 75% of these contributions are used to support local hospital Care for the Poor programs. 17.5% is used to support SJH Community Partnership Fund ("SJH Fund") grant initiatives, and the remainder goes to reserves. The SJH Fund has identified five priority areas for investment of its Community Benefit grant funds, the first of which is Housing, with the specific charge to: "work directly and in coordination with key community partners to develop sustainable, collective efforts to reduce homelessness and improve availability and accessibility of housing that is affordable for low income and other vulnerable population."

Burbank is seeking a commitment of guarantee from the County for the COSR required in the Homekey R2 application for maximum funding, and in return commits to apply for COSR funding from the ILOS Incentive Fund, the HCBS Fund, and the SJH Fund before returning to the County for any balance amount still needed to meet the \$2 million threshold guarantee (see letter attached).

Today's item requests the Board of Supervisors receive a presentation on the proposed project and approve an Assignment of Fund Balance as detailed above for prospective loans to Burbank (1) in the amount of \$2 million for capital improvements and (2) in an amount not to exceed \$2 million for capitalized operating subsidy reserves. If the Homekey R2 grant application is approved, staff will return to the Board of Supervisors at a future meeting, following the notice of Homekey R2 award, to request appropriations from these funding sources and approval of the loans to Burbank for the project.

The actual amount of the proposed loan for the capitalized operating subsidy will reflect Napa County's recommended contribution to the capitalized operating subsidy, based on the status of additional/alternative grant funding awards for the operating subsidy that may have been obtained by Burbank by that time.

October 15, 2021

County of Napa
1195 Third Street
Napa, CA 94559

Re: Wine Valley Lodge Homekey Project – Burbank Housing’s Commitment to Apply for Other Sources of Operating Subsidy

To Whom It May Concern:

This letter serves as Burbank Housing’s pledge to apply for grant funding from California Partnership Health Plan (“PHP”) and St. Joseph Queen of the Valley Medical Center (“QVMC”) to fill the \$2M operating subsidy that the County of Napa plans to guarantee for the Homekey Project at Wine Valley Lodge. Burbank Housing understands that such guarantee is conditioned upon Burbank Housing’s pursuit of the following funding opportunities:

1. CalAIM “**ILOS (aka, Community Supports) Incentive Funds.**” These funds will be available from the State through Partnership Health Plan. PHP will be working through their spending proposals and award process in the near future and will then announce and open their grant award opportunity.
2. CMS “**Home and Community-Based Services (HCBS) Funds.**” At this time, these funds are partially approved by CMS and managed care plans (including PHP) are awaiting more details expected to be available in late November/early December.
3. St. Joseph Health “**Community Partnership Funds**” Each year QVMC allocates 10% of its net income (net unrealized gains and losses) to the St. Joseph Health Community Partnership Fund. 75% of these contributions are used to support local hospital Care for the Poor programs. 17.5% is used to support SJH Community Partnership Fund grant initiatives, and the remainder goes to reserves. The SJH Fund has identified five priority areas for investment of its Community Benefit grant funds, the first of which is Housing, with the specific charge to: “work directly and in coordination with key community partners to develop sustainable, collective efforts to reduce homelessness and improve availability and accessibility of housing that is affordable for low income and other vulnerable population.”

Burbank Housing has previous experience with PHP funding and a strong relationship with QVMC and their SJH Community Partnership Funds. Our Heritage House & Valle Verde project, a 90-unit development in Napa that will provide permanent supportive housing, was awarded a \$1M grant from PHP and a \$1M grant from Queen. In addition, our most recent Homekey project in Napa, Adrian Court, was also awarded a \$1M grant from Queen. We will continue to leverage our experience and relationships with these funding sources to secure similar opportunities for the Homekey Project at Wine Valley Lodge.

Burbank Housing acknowledges that the County's commitment of a \$2M guarantee requires Burbank to first apply for (or jointly apply for) operating subsidy reserve funding from the **ILOS Incentive Fund**, the **HCBS Fund**, and the **SJH Fund**. Burbank Housing pledges to work closely with the County and make every effort to secure these sources (ILOS, HCBS, and SJH) with the intention that these sources would fill the \$2M operating subsidy needed for the Homekey Project and replace the need for the County's guarantee.

Sincerely,



Lawrance Florin
Chief Executive Officer



A Tradition of Stewardship
A Commitment to Service

Project Homekey Round 2

Application for Wine Valley Lodge

Project Homekey Overview



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A Commitment to Service

March 2020: Project Roomkey

- COVID-19 Pandemic response
- Providing non-congregate shelter to elderly and medically frail individuals experiencing homelessness in order to minimize strain on health care system capacity.

July 2020: Project Homekey

- COVID-19 Pandemic response
- Facilitate the rapid development of cost-effective new units of permanent housing.
- Transition individuals from Project Roomkey to permanent housing.

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Project Homekey Overview



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Homekey Round 1 (July 2020)

- \$864 Million in funding, 94 projects Statewide.
- 1 project in Napa: Adrian Court (14 units), with the County of Napa as a co-applicant.

Homekey Round 2 (September 2021)

- \$1.45 Billion in funding.
- 1 project application for funding by Burbank Housing, with the City of Napa as a co-applicant.

Homekey Round 3 (Anticipated Summer 2020)

- Not yet announced.

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Local Project Homekey History



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Adrian Court Project

- Existing multi-family complex with 14 units.
- \$2.4M award from Homekey R1, additional application for \$700K pending for Homekey R2.
- Queen Valley Medical Center grant of \$1.2M to the project.
- All residents former Project Roomkey participants.

Project Homekey Round 2

Wine Valley Lodge



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Local Application: Wine Valley Lodge

- ✓ 55 units – 54 units of 30% AMI, 1 un-restricted managers unit.
- ✓ County continuously operated since March 2020.
- ✓ Close to services, including OLE Health, and amenities.
- ✓ In excellent condition, requiring minimal rehabilitation.
- ✓ LOI signed between Burbank Housing & Owner.

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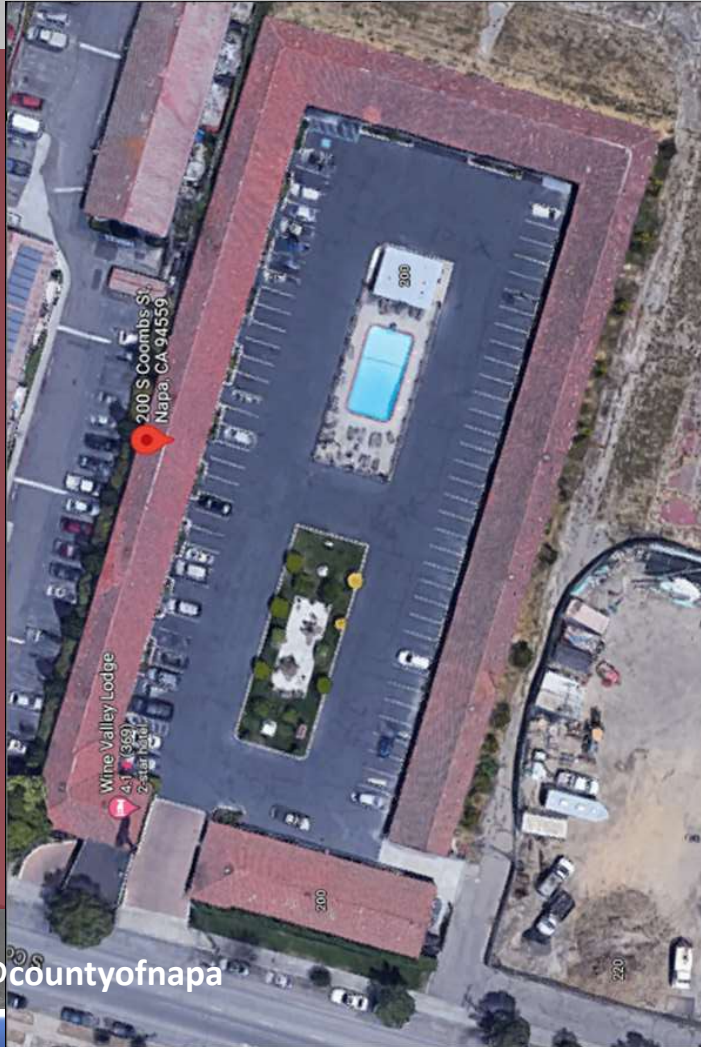


Project Homekey Round 2

Wine Valley Lodge



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Project Homekey Round 2

Wine Valley Lodge



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Project Homekey Round 2



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Wine Valley Lodge - Sources and Uses

200 S Coombs St, Napa, CA 94559	54 Homekey Units	
Permanent Sources	Amount	Per Unit
Homekey Round 2	\$ 12,783,333	\$ 236,728
City of Napa Housing Trust Fund	\$ 3,000,000	\$ 55,556
County of Napa	\$ 2,000,000	\$ 37,037
Wells Fargo Accelerator Grant	\$ 150,000	\$ 2,778
County of Napa (Operating Match)	\$ 2,000,000	\$ 37,037
Homekey Operating Subsidy	\$ 1,272,000	\$ 23,556
TOTAL	\$ 21,205,333	\$ 392,691
Uses	Amount	Per Unit
Land and Building	\$ 15,950,000	\$ 295,370
Rehabilitation Costs	\$ 1,415,977	\$ 26,222
Predevelopment Costs	\$ 46,000	\$ 852
Soft Cost Contingency	\$ 60,000	\$ 1,111
Permit Fee	\$ 10,000	\$ 185
Design	\$ 60,000	\$ 1,111
Non-HCD Reserve	\$ 1,944,000	\$ 36,000
Homekey Operating Match	\$ 1,296,000	\$ 24,000
Financing and Legal	\$ 50,000	\$ 926
Developer Fee/Project Administration	\$ 250,000	\$ 4,630
Capitalized Replacement Reserve	\$ 123,356	\$ 1,111
TOTAL	\$ 21,205,333	\$ 392,691

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Project Homekey Round 2

Wine Valley Lodge



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Supportive Housing - A proven solution

Decades of research shows providing a stable, affordable place to live that does not limit length of stay, along with services that promote housing stability—known as “supportive housing”—ends homelessness among people with the greatest vulnerabilities, including people experiencing chronic homelessness.

- Studies show supportive housing reduces healthcare costs significantly.
- Supportive housing reduces blight and improves property values.
- Supportive housing decreases recidivism to local jails and state prisons.

For these reasons, the State has invested millions of dollars in leveraging federal and local dollars to create more supportive housing. Developers are essential partners enabling communities to build supportive housing and use these resources efficiently.

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Project Homekey Round 2



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A Commitment to Service

ARPA Expenditure Category

The ARPA Federal Regulations include a “non-exclusive” list of pre-identified “Expenditure Categories” which:

- (1) Designate a range of suggested eligible uses for ARPA funds, and,
- (2) Provide guidance whether proposed projects align with currently identified eligible uses.

Expenditure Category 3.10: Housing Support – Affordable Housing

Questions

Contacts:

Jennifer Palmer, Director of Housing & Homeless Services,
jennifer.palmer@countyofnapa.org

Larry Florin, CEO of Burbank Housing,
lflorin@burbankhousing.org

Jocelyn Lin, Associate Director of Housing for Burbank Housing,
jlin@burbankhousing.org



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A Commitment to Service



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-940

TO: Board of Supervisors
FROM: John Tuteur, Registrar of Voters
REPORT BY: John Tuteur, Registrar of Voters
SUBJECT: Introduce an Ordinance to Amend Napa County Code, Chapter 1, Article 1.08 to Allow Updating of Supervisorial District Boundaries by Resolution

RECOMMENDATION

SET MATTER 9:30 AM - 20 Minutes

Introduction and intention to adopt an ordinance amending Chapter 1.08 (Supervisorial Districts) of Title 1 (General Provisions) of the Napa County Code, by adding a new Section 1.08.100 to allow for the establishment of supervisorial districts by resolution, and deleting Sections 1.08.010 through 1.08.080 of the Code, which set forth the current supervisorial district boundaries based on the 2010 federal census, effective upon passage of a resolution establishing new supervisorial district boundaries.

EXECUTIVE SUMMARY

The redistricting process has traditionally occurred over multiple months, but, because of delays in the 2020 federal census data, the timeline for redistricting in 2021 is compressed. The Legislature has accordingly amended Elections Code Section 21500, effective September 27, 2021, to allow counties to adopt new district boundaries either by ordinance or resolution. Adoption of supervisor district boundaries by resolution is a more streamlined process than adoption by ordinance and will provide greater flexibility for the Registrar of Voters and the County Surveyor to implement new boundaries.

PROCEDURAL REQUIREMENTS

1. Staff presents the item;
2. Receive public comments; and
3. Motion, second, discussion, and vote on intention to adopt the ordinance.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No
County Strategic Plan pillar addressed: Collaborative and Engaged Community Effective and Open Government

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.

BACKGROUND AND DISCUSSION

Elections Code Section 21500 was amended effective September 27, 2021 to allow counties to adopt new district boundaries by ordinance or resolution. Typically, ordinance adoption takes a minimum of 60 days, and at least 2 hearings. The redistricting process has traditionally occurred over multiple months, but, because of delays in the federal census data, the timeline for redistricting in 2021 by December 15, 2021 is compressed. Adoption of supervisor boundaries by resolution is more streamlined than adoption by ordinance and will provide greater flexibility for the Registrar of Voters and the County Surveyor to implement new boundaries.

The proposed Ordinance adds a new Section 1.08.100 to Chapter 1.08 of the Napa County, stating that district boundaries may be established by resolution and that said resolution shall be published and available on the County website during the time such supervisorial districts are in effect. The proposed Ordinance also provides that Sections 1.08.010 through 1.08.080 of Chapter 1.08 of Title 1 of the Napa County Code, which set forth the current supervisorial district boundaries based on the 2010 federal census, will be repealed when the Board of Supervisors adopts new district boundaries via resolution.

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF NAPA COUNTY,
STATE OF CALIFORNIA, ALLOWING THE ADOPTION OF FUTURE
SUPERVISORIAL DISTRICT BOUNDARIES THROUGH PASSAGE OF A
RESOLUTION**

WHEREAS, the Board of Supervisors must adjust supervisorial district boundaries every ten years using decennial census data so that the supervisorial districts remain substantially equal in population as required by the United States Constitution; and

WHEREAS, Napa County has traditionally amended supervisorial district boundaries through the passage of an ordinance; and

WHEREAS, Napa County Code Title 1, Chapter 1.08 identifies the supervisorial district boundaries for each of the five districts within Napa County; and

WHEREAS, Government Code Sections 25127 through 25130 require that amendments to the County Code occur through the adoption of an ordinance; accordingly, amendments to supervisorial district boundaries contained in the Napa County Code must occur through that process as well; and

WHEREAS, California Elections Code Section 21500(e), effective September 27, 2021, allows a county to adopt supervisorial district boundaries by resolution or ordinance; and

WHEREAS, generally the adoption of an ordinance requires a two-hearing process as set forth in Government Code Section 25131, and ordinances are not effective until 30 days after their final passage pursuant to Government Code Section 25123, which ultimately results in ordinance adoption taking roughly 60 days; and

WHEREAS, the redistricting process has traditionally occurred over multiple months, but because of delays in the release of 2020 federal census data the timeline for redistricting in 2021 is greatly compressed; and

WHEREAS, given the shortened timeline for redistricting, there is a corresponding need to streamline the district boundary adoption procedure to provide maximum time for creation, review and approval of new district boundaries, and

WHEREAS adoption of an ordinance amendment allowing for modification of district boundaries through a resolution will reduce those procedural delays.

NOW, THEREFORE, the Napa County Board of Supervisors, State of California, ordains as follows:

SECTION 1. A new Section 1.08.100 (entitled “Supervisory Districts Boundaries by Resolution”) shall be added to Chapter 1.08 (entitled “Supervisory Districts”) of the Napa County Code, to read in full as follows:

1.08.100 Supervisory District Boundaries

Supervisory Districts may be established by resolution. The resolution establishing supervisory districts shall be published and available on the Napa County website for as long as said districts are in effect.

SECTION 2. Sections 1.108.010 through 1.108.080 of Chapter 1.08 (entitled “Supervisory Districts,”) of Title 1 of the Napa County Code are hereby repealed from the Napa County Code, effective upon the passage of a resolution by the Board of Supervisors establishing new or revised supervisory district boundaries.

SECTION 3. This Ordinance shall take effect thirty (30) days after its passage.

SECTION 4. A summary of this Ordinance shall be published at least once five days before adoption and at least once before the expiration of 15 days after its passage in the Napa Register, a newspaper of general circulation published in the County of Napa, together with the names of members voting for and against the same.

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

The foregoing Ordinance was introduced and read at a regular meeting of the Board of Supervisors of Napa County, State of California, held on the 19th day of October, 2021, and passed at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the 2nd day of November, 2021, by the following vote:

AYES:	SUPERVISORS	_____

NOES:	SUPERVISORS	_____
ABSTAIN:	SUPERVISORS	_____
ABSENT:	SUPERVISORS	_____

 ALFREDO PEDROZA, Chair of the
 Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <i>S. Darbinian</i> Date: October 10, 2021	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: _____
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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



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-978

TO: Board of Supervisors
FROM: David Morrison, Director of Planning, Building and Environmental Services
REPORT BY: John McDowell, Supervising Planner
SUBJECT: Residential Development Ordinance - Board Workshop

RECOMMENDATION

SET MATTER 10:00 AM - 1 Hour

Director of Planning, Building and Environmental Services (PBES) requests direction on the attached draft ordinance establishing limits on residential site improvements for parcels within the Agricultural Preserve (AP) Zoning District.

EXECUTIVE SUMMARY

It is requested that the Board conduct a workshop on the attached draft ordinance that, if implemented, would establish limits on residential site improvements for parcels zoned AP. Current zoning regulations do not limit the amount of an AP property that can be developed with residential uses and structures. The proposed ordinance would limit by-right residential uses on an AP property to a contiguous one-acre building envelope that would be established at the time a building permit is issued. Projects that result in over one-acre of contiguous residential use would be subject to approval of a discretionary use permit before the Zoning Administrator. The draft ordinance has provisions allowing preexisting legally established residential uses that exceed the threshold to continue, and be rearranged, provided that a use permit would be triggered if the area of preexisting residential development area is expanded.

The AP zoning district applies to the vast majority of valley floor properties between Cities of Napa and Calistoga, as well as two other valley floor locations in Gordon and Wooden Valleys. Napa County Code Section 18.16.010 states that "[t]he AP district classification is intended to be applied in the fertile valley and foothill areas of Napa County in which agriculture is and should continue to be the predominant land use, where uses incompatible to agriculture should be precluded and where the development of urban-type uses would be detrimental to the continuance of agriculture and the maintenance of open space which are economic

and aesthetic attributes and assets of the county.” Over the last several decades, the AP district has proven to be a desirable location for development of wine country estates. Annually approximately 10 acres of AP land develop into residential uses. Conversion of AP land to residential estate developments was first identified by the Agricultural Protection and Advisory Committee (APAC) in 2016, and subsequently raised on several occasions leading to Board directing staff to develop a concept for limiting the scale of by-right residential development. The Board addressed this matter in the Napa County Strategic Plan (2019-2022) under Action Item 9.C.

PROCEDURAL REQUIREMENTS

1. Staff reports.
2. Public comments.
3. Motion, second, discussion and direction to staff.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No
County Strategic Plan pillar addressed: Vibrant and Sustainable Environment

ENVIRONMENTAL IMPACT

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

BACKGROUND AND DISCUSSION

In 2016 the APAC and Planning Commission provided recommendations to the Board of Supervisors regarding possible changes to winery and residential land use regulations in agriculturally zoned areas. As part of the Board’s final action, APAC action item #5 directed staff to: “Prepare an ordinance to limit the total development area of residential development within AP and AW zoned parcels. Take no action with regards to changing the existing development area of wineries.”

In 2018, the Board conducted a study session on residential uses in agricultural areas and the Viewshed ordinance. The Board evaluated several options ranging from limiting home size, requiring design review to setting a general coverage requirement. The Board directed staff to develop a concept limiting all residential

development, including structures and site improvements, to a single contiguous land area, or envelope.

ORDINANCE COMPONENTS

In response to Board direction, staff has developed the attached draft ordinance. The ordinance, if enacted, will limit new residential projects on AP district land to one contiguous acre, but allows administrative exceptions for noncontiguous one-acre developments when warranted by certain environmental or legal constraints. It also enables granting a Zoning Administrator level use permit for developments exceeding the one-acre threshold subject to required findings addressing farmland protection, visual effects, and housing demand. Lastly, it addresses legally established preexisting conditions by allowing such uses to continue and be rearranged as preexisting legal conformities provided that such uses do not expand or be relocated.

Specific components of the ordinance are discussed below:

Section 18.08.536 (Residential development envelope - definition) - This section defines which improvements are subject to the residential coverage limits prescribed in subsequent sections. The definition also expressly states site improvements that are not included within the definition, such as structures and areas used for agriculture.

Section 18.104.440 (Residential development envelope - general standards) - This section contains requirements limiting residential development envelopes, and the implementing requirements to apply the limit. This section also provides for administrative exceptions to the requirement that residential development envelopes be contiguous, and enables the process and granting of use permits for projects that exceed the general standard.

18.104.440.A (Easement or deed restriction) - This section requires that prior to issuance of residential structure or improvement permit within the AP zoning district, that the residential development envelope be identified and placed within an easement or deed restriction. The section limits the size of the envelope to one acre, and stipulates that it must be a contiguous area. It does not otherwise specify what the shape of that area is other than to encompass all residential improvements as defined.

18.104.440.B (Preexisting conditions) - This section addresses legally established residential uses and improvements that predate the ordinance, acknowledging that existing improvements that do not comply with the standards are considered conforming (as opposed to nonconforming) with zoning, and are allowed to be revised, rehabilitated, remodeled, or rearranged provided that the preexisting condition does not expand and/or relocate into new areas of the parcel unless in compliance with the ordinance. Relocation or expansion is possible with grant of a use permit as set forth in Sections 18.104.440 and 18.104.442.

18.104.440.C (Revisions to prior envelopes) - This section enables the relocation or enlargement of a previously recorded development envelope provided that the new configuration conforms to standards.

18.104.440.D (Administrative exceptions) - This sections provides for an administrative exception (i.e. - staff approval during building permit review) to the requirement that a development envelope be contiguous if certain site conditions preclude a contiguous envelope. When approving a non-contiguous envelope, it remains limited to one acre in aggregate area and the exception can only be approved for the following site constraints: 1) Slopes greater the 30% based on the Conservation regulations; 2) Stream, wetland and watercourse setbacks based on the Conservation regulations; 3) Floodway setbacks based on the Floodplain Management Ordinance; and 4) Public and private easement that prohibit residential improvements.

18.104.442 (Use permits) - This section enables Zoning Administrator processing and granting of use permits for projects that exceed the one acre limit, or that expand or relocate a larger legally established envelope existing prior to the adoption date of the ordinance. Use permit processing would be subject to a public noticing and hearing before the Zoning Administrator, and the Zoning Administrator would be required to make the following findings:

Environmental - Residential envelope expansion would require CEQA review, and the finding requires that the project not result in significant unavoidable environmental impacts;

Visual - Requires that the views of the project from public roads are limited and insignificant;

Farmland - Requires that the project results in no net loss of prime farmland or farmland of Statewide Importance;

Housing - Requires that the project results in a net positive impact on provision on housing within Napa County;

Easement - Requires that an easement or deed restriction is recorded.

Sections 18.124.010 (Use permit granting) and 18.124.020 (Application) - This section will be amended to add the Zoning Administrator as a decision maker in addition to the Planning Commission. These are technical changes linking Sections 18.10.020 and 18.104.442 to the general use permit requirements and process contained in Chapter 18.124 addressing Use Permits.

DISCUSSION ITEMS

Maximum lot coverage requirement: One acre was selected as the maximum coverage threshold after evaluating existing residential envelopes throughout the AP district (see attached examples) and comparing

them to residential densities in urban settings. A subdivision with 6,000 sq. ft. lots and public streets will typically has a density of 5-6 units per acre. Large lot urban estates like those present in Silverado Country Club can range from 1-3 units per acre. In rural densities, lots with densities lower than one unit per acre typically are not fully utilized solely by residential improvements; instead it is common for agricultural uses, such as small gardens and animal husbandry to occupy portions of lots greater than 1 acre in size.

Implementation: In addition to the operative language of the code, staff anticipates implementing a Department Procedures memo detailing how to determine residential coverage envelope boundaries with the intent of consisting applying the regulations. For example, there is typically not a hard boundary where a vineyard ends and a residential landscape begins. Instead vineyards tends to be separated from residential areas by some found of transitional space, such as a tractor road at the end of vine rows. How these transitional areas are interpreted will influence project designs in the future.

Agricultural Watershed - The proposed ordinance does not include Agricultural Watershed (AW) zoning district, which generally corresponds to hilly/mountainous terrain outside of the Napa Valley floor although most of Carneros and the valleys of Eastern Napa County are also zoned AW. Board direction in 2018 was limited to focusing staff's efforts on addressing residential development in the AP. In addition, development in hilly/mountainous terrain indicative of the AW district is subject to significantly more requirements than the AP district, including viewshed, conversation/tree protection, water course protection (streams, wetlands, ephemeral drainages), and fire protection.

PUBLIC INPUT

Prior to this workshop in August and September, two emails soliciting feedback on the draft ordinance were sent to the County's interested parties list. Attached are comment letters and emails from interested parties. In addition, approximately a dozen interested parties contacted staff by phone and/or Zoom. The vast majority of callers expressed concerns about the regulations negatively affecting their property values or disrupting real estate deals and/or development plans. These customers also questioned what problem or issues this ordinance was attempting to address.

Conversion of Agricultural Land - Concern over the loss of producing agriculture land and visual impacts to Napa Valley were two factors contributing to the APAC's original recommendation to limit development on agriculturally zoned properties. Agricultural land uses are tracked in the County's Geographic Information System, and tables indicating the rate of conversion are attached to this report. To summarize, between 1993 and 2018, an average of 10.3 acres of AP land were converted annually to non-agricultural use per year of which an average of 3.2 acres/year was for residential uses.

The draft ordinance may not significantly change the conversion rate of AP land to residential uses, but will allow additional County review for proposed residential developments exceeding one-acre due to the use permit

requirement. New developments exceeding the one-acre threshold would be subject to a process similar to what is required review of a winery, except that these residential applications would be considered by the Zoning Administrator as opposed to the Planning Commission. The use permit process also includes evaluation of the project's potential to result in environmental impacts and triggers preparation of CEQA document, which does not presently occur because these residences are allowed by-right. It is possible that the use permit process may deter some projects from occurring, or result in projects being redesigned to stay within the one-acre threshold. Two story structures are common, but to stay under one acre and avoid both CEQA and a public process, developers may increase building massing.

Lastly, it appears that large estate development in most areas zoned AW is becoming increasing difficult due to increased fire hazards and corresponding upgrades to State fire safety design standards, as well as purported greater difficulty obtaining fire insurance. Also, in 2019 the County increased water course and tree protection standards in the Conservation Regulations which affects many properties in the AW zone. Given this, there is some possibility that interest in developing estates on AP land may increase.

**SUMMARY OF PROPOSED ZONING AMENDMENTS
TO TITLE 18 (ZONING ORDINANCE) FOR A
NEW RESIDENTIAL DEVELOPMENT
ENVELOPE ORDINANCE**

Amend Chapter 18.08 (Definitions.) to add the following new section/definition:

A new Section 18.08.536 entitled “Residential development envelope.”

“Residential development envelope” means land area containing residential uses or improvements including, but not limited to, a single-family dwelling unit, legal nonconforming dwellings, , a guest cottage, bed and breakfast establishments, and residential accessory structures or improvements including, but not limited to, gazebos, decks, trellises, sports courts, patios, pools, landscaping, paved or semi-permeable surfaces, parking areas, water tanks, mechanical equipment, and accessory power generation.

For purposes of this definition only, the following shall not be included when determining the residential development envelope: structures and improvements used exclusively for agriculture (as defined in Section 18.08.040); farmworker housing and centers; residential septic systems; residential wells and well houses; lakes, ponds or natural water features; driveways or private roads located more than fifty feet from the residential use providing access to the residential development envelope; and caves used for residential purposes.

Amend Chapter 18.104 (Additional Zoning District Regulations.) by adding objective standards for residential development envelopes:

A new Section 18.104.440 entitled “Residential development envelope - General standards.”

A. For parcels in the Agricultural Preserve zoning district greater than one acre in size, no residential building permit or grading permit shall be issued by any county staff, agency or department for any new residential structure or improvement, or to an existing structure or improvement, that results in an expansion or relocation of the residential development envelope (as defined in Section 18.08.536), unless the project complies with the following standards:

1. The residential development envelope shall be a contiguous area not exceeding one acre; and
2. The property owner, prior to issuance of a building permit or grading permit, shall be required to execute and record in the county recorder’s office a perpetual protective easement or permanent deed restriction in a form acceptable to county counsel documenting the residential development complies with this section.

B. Legally established residential uses and/or improvements pre-dating _____ [insert effective date of ordinance] that do not comply with Section 18.104.440.A are legal conformities that may be repaired, maintained, restored, rehabilitated, redesigned, remodeled, rebuilt or rearranged, provided that the existing residential use and residential development envelope is not expanded or relocated and prior to issuance of a building

permit or grading permit, a perpetual protective easement or permanent deed restriction in a form acceptable to county counsel is executed and recorded in the county recorder's office.

C. Parcels in the Agricultural Preserve zoning district containing residential structures and/or uses pursuant to subsection (B) of this section may relocate and/or expand the preexisting residential development envelope, upon grant of a use permit by the zoning administrator, if after a public hearing, the zoning administrator makes all of the findings in Sections 18.124.070 and 18.104.442 of this code.

D. Notwithstanding subsection (A) of this section, non-contiguous residential development envelopes not exceeding one acre in aggregate area shall be permitted where a contiguous residential development envelope is precluded by one or more of the following natural or legal constraints:

1. Slopes greater than 30% as determined per the methodology in Section 18.108.060 (C);
2. Stream or wetland setbacks as set forth in Sections 18.108.025, and 18.108.026;
3. A floodway pursuant to Section 16.04.510 (Floodplain Management.); or
4. Public or private easements that prohibit those residential improvements or uses included within the residential development envelope (as defined in Section 18.08.536).

E. Residential development envelopes may be relocated or expanded provided that the contiguous area of the relocated or expanded residential development envelope does not exceed one acre, and they comply with subsections (A)(1) and (A)(2) of this section.

F. The total residential development envelope shall be determined in conjunction with any residential building permit or grading permit for a residential structure or site improvement by calculating the total contiguous surface area occupied by all residential structures and improvements included in Section 18.08.536.

G. Except as provided in subsection (B) of this section, extant residential structures or improvements that will not be included within a residential development envelope shall be removed, or repurposed to one of the uses allowed either as a matter of right or without a use permit in the Agricultural Preserve zoning district prior to issuance of any permit prescribed under subsection (A) of this section.

H. For parcels that lie partially within the Agricultural Preserve district and another zoning district(s), subsections (A through G) of this section shall apply to the portion of the parcel that lies within the Agricultural Preserve district.

A new Section 18.104.442 entitled “Residential development envelope – Use permit findings.”

New or existing residential development envelopes in the Agricultural Preserve zoning district that do not meet all of the standards set forth in Section 18.104.440 (Residential development envelope – General standards.) may be approved by the zoning administrator if, after a public hearing pursuant to 18.124.040, the zoning administrator makes all of the findings in this section and in Section 18.124.070 of this code.

A. Approval of the residential development envelope would not result in significant unmitigated environmental impacts;

B. The residential development envelope is not visible from a public road, or if it is visible the residential development envelope includes features that predominately screen structures and improvements from the public road;

C. The residential development envelope would not result in the conversion of land designated as farmland or grazing land under the State Farmland Mapping and Monitoring Program, or if conversion of farmland or grazing land occurs, the project includes measures to permanently protect equivalently designated farmland or grazing land at a ratio of three acres protected for every acre converted; and

D. The property owner, prior to issuance of a building permit or grading permit, shall execute and record in the county recorder's office a perpetual protective easement or permanent deed restriction in a form acceptable to county counsel documenting the residential development envelope complies with this section.

Amend Chapter 18.10 (Zoning Administrator) to allow the zoning administrator to hear and decide use permit applications for residential development envelopes that do not comply with the performance standards in Section 18.140.440 as follows:

Amend Section 18.10.020 (Duties-Specific subjects.) to read:

K. ~~(Reserved)~~ Use permit applications for residential development envelopes that do not comply with the standards in Section 18.140.440 after making the findings required by Sections 18.124.070 and 18.104.442 of this title;

Amend Chapter 18.124 (Use Permits) to allow the zoning administrator to hear and decide use permit applications for residential development envelopes that do not comply with the performance standards in Section 18.140.440 as follows:

Amend Section 18.124.010 (Granting.) to read as follows:

A use permit may be granted by the commission or zoning administrator subject to the provisions of this chapter, provided however, that if the board of supervisors is the decision maker on any companion action which is necessary to approve the use permit, the commission shall make an advisory recommendation to the board to approve or disapprove the entire action, and the board shall thereafter make the final decision on the entire action, including any determination to be made under the California Environment Quality Act (CEQA), in accordance with this chapter.

Amend Section 18.124.020 (Application.) to read as follows:

Application for a use permit shall be made to the commission or to the zoning administrator in writing on a form prescribed by the director and shall be accompanied by plans, elevations and other appropriate information, graphic depictions, necessary to show details of the proposed use.

ACRES OF AG LAND CONVERTED TO NON-AG, 1993-2018

Era				AP		AW		other*		countywide	
				acres	rate	acres	rate	acres	rate	acres	rate
1993	-	2002	9	78	8.6 ac/yr	26	2.9 ac/yr	74	8.2 ac/yr	178	19.8 ac/yr
2002	-	2005	3	28	9.3 ac/yr	14	4.6 ac/yr	31	10.3 ac/yr	73	24.3 ac/yr
2005	-	2007	2	41	20.5 ac/yr	6	3 ac/yr	20	10.2 ac/yr	67	33.7 ac/yr
2007	-	2010	3	17	5.5 ac/yr	9	3.1 ac/yr	21	7 ac/yr	47	15.6 ac/yr
2010	-	2014	4	49	12.2 ac/yr	15	3.8 ac/yr	10	2.6 ac/yr	74	18.5 ac/yr
2014	-	2016	2	25	12.6 ac/yr	1	0.5 ac/yr	21	10.4 ac/yr	47	23.4 ac/yr
2016	-	2018	2	20	10.1 ac/yr	2	1.2 ac/yr	3	1.3 ac/yr	25	12.6 ac/yr
TOTAL CONVERTED (1993-2018)				25		257	10.3 ac/yr	74	2.9 ac/yr	180	7.2 ac/yr
						511	20.4 ac/yr				

* "other" consists mostly of lands falling within city boundaries, but does include some County non-ag zoning designations

REASON FOR CONVERSION OF AG LAND TO NON-AG, 1993-2018

Era				REASON FOR CONVERSION, EXPRESSED IN ACRES				
				other	reservoir or other ag infrastructure	residential	road or driveway	winery
1993	-	2002	9	22	5	85	18	48
2002	-	2005	3	20	5	35	4	8
2005	-	2007	2	17	2	20	14	15
2007	-	2010	3	8	0	27	4	7
2010	-	2014	4	10	4	26	9	25
2014	-	2016	2	17	7	12	2	9
2016	-	2018	2	1	1	6	1	16
TOTAL CONVERTED (1993-2018)				25		212	52	128
ANNUALIZED CONVERSION RATE								
				3.8 ac / yr	0.9 ac / yr	8.5 ac / yr	2.1 ac / yr	5.1 ac / yr

From: [Paul Bresciani](#)
To: [McDowell, John](#); [Bordona, Brian](#)
Subject: Draft Agricultural Preserve Residential Development Envelope Ordinance
Date: Wednesday, August 25, 2021 8:45:32 AM

[External Email - Use Caution]

Hello Mr. McDowell and Mr. Bordona,

I'm Paul Bresciani, and I was born in Napa's Queen of the Valley hospital in 1963 and grew up on Big Ranch Rd. Our family still owns our homestead in Napa Valley, and we (myself, my brother and sister) are in the process of selling it. We've accepted a reasonable offer, and things were on the path to closure when your email came out describing something that would limit the size and scope of the home they would like to build. This has scared our buyers, who want to build a large home on the property, as they need a little more than an acre to build on. If this were to move on from discussion in Sept./Oct., they will pull out of the deal. I would assume anyone spending in excess of 5 million dollars does not want the county of Napa telling them what they can and cannot build on their property of over 5 acres - let alone if they had 10, 20 or 100 acres. Unless I'm getting this wrong, this seems like a ridiculous approach to land conservation, and would only have the undesired effect of substantially lowering property values throughout the valley.

I, obviously, think this is a horrific plan, and would hope you would completely table it immediately.

Thank you for your time,

-Paul Bresciani
(513) 206-6240
bresciani@aol.com

From: [stefani Phipps](#)
To: [McDowell, John](#)
Subject: Agricultural Preserve Residential Development Envelope Ordinance
Date: Wednesday, October 6, 2021 8:41:31 AM

[External Email - Use Caution]

I'm writing to let you know my disapproval of this draft ordinance. I fail to see the problems that this is allegedly solving.

It is restrictive and unnecessary given the existing ag preserve codes. We need more flexibility for housing and shelter, not less. This ordinance is draconian and will cost taxpayers money. If anything, we should be restricting new vineyards not buildings given the extreme water use they take.

Please vote No on this ordinance.

Stefani Phipps
2115 Hoffman Lane
Napa Ca

Sent from my iPad

From: [JUSTIN HAFEN](#)
To: [McDowell, John](#); [Bordona, Brian](#); [Morrison, David](#); [Anderson, Laura](#); [PublicComment](#)
Subject: PROPOSED ZONING AMENDMENT TO TITLE 18 (ZONING ORDINANCE) FOR A NEW RESIDENTIAL DEVELOPMENT ENVELOPE ORDINANCE
Date: Wednesday, October 6, 2021 9:47:45 AM

[External Email - Use Caution]

I am writing today to express my questions and concerns regarding the Proposed Zoning Amendment that was sent on August 18th along with my request for a more appropriate "Stakeholder Outreach" process that allows the County and stakeholders to consider this proposal in more depth. I would like my letter to be included in the Staff Report being prepared for the Board of **Supervisor's** workshop on October 19, 2021, or if received after the Staff Report is issued, provided to the Board at the workshop.

This proposal raises several significant issues and concerns that all need further discussion:

- A 1-acre, "one size fits all" limitation on residential development is not the right approach and will **disproportionately impact** property owners with larger parcels.
- Has the County considered the financial impacts of this proposal and the very real possibility that it will dramatically reduce our County's property tax revenue? Having lost their ability to reasonably develop their property, landowners will likely record Williamson-Act easements on the majority of their properties exempting them from paying property taxes. This would severely reduce the County's tax revenue base and its ability to pay for the public services it provides currently. **This will impact everyone in Napa County, not just landowners!**
- The Proposal will significantly **limit the ability for family-owned farms and vineyards** to develop their properties to provide for multi-generational housing which is very needed to provide for the future viability of these types of properties.
- With harvest underway, **this is not the right time** for the County to propose this type of far-reaching and potentially negatively impactful zoning amendment. I find it equally concerning that Staff's August 18th communication stated that it is anticipated that the Board may consider the proposal before year-end. This issue deserves a more thoughtful, studied and reasonable process that stakeholders can take part in that does not directly conflict with harvest season. My understanding is that this issue was discussed years ago but did not progress further. **It seems very inappropriate that it is now being rushed through with little to no "stakeholder" input.**
- Has the County considered the potential **visual impacts** of this proposal in that it will strongly encourage 2-story development and dramatically impact the views from adjacent properties and public roads?
- Enacted by the County in 1968, over 50 years ago, the **"Ag Preserve" is working very well and continues to be our best tool to preserve Napa's unique agricultural character.** The Ag Preserve provides for very restricted zoning and therefor significantly limits this type of residential development. Are further restrictions truly needed? It seems the County should be focused on far more pressing issues.

Given these concerns, I would strongly encourage the County Planning Commission and Board of Supervisors to not support the Proposed Zoning Amendment without more thorough study and adequate opportunity for stakeholders to review the proposal.

Sincerely,

Justin Hafen

Justin Hafen



HurleyHafen, LLC

[1119 3rd Avenue](#)

[Napa, CA 94558](#)

O 707 819 2840

M 415 317 2223

www.hurleyhafen.com

From: [John Hurley](#)
To: [McDowell, John](#); [Bordona, Brian](#); [Morrison, David](#); [Anderson, Laura](#); [PublicComment](#)
Subject: PROPOSED ZONING AMENDMENT TO TITLE 18 (ZONING ORDINANCE) FOR A NEW RESIDENTIAL DEVELOPMENT ENVELOPE ORDINANCE
Date: Wednesday, October 6, 2021 11:20:53 AM

[External Email - Use Caution]

I am writing today to express my questions and concerns regarding the Proposed Zoning Amendment sent on August 18th along with my request for a more appropriate "Stakeholder Outreach" process that allows the County and stakeholders to consider this proposal in more detail depth. In addition, I want my letter to be included in the Staff Report being prepared for the Board of **Supervisor's** workshop **on October 19, 2021**, or if received after the Staff Report is issued, provided to the Board at the workshop.

This proposal raises several significant issues and concerns that all need further discussion:

- A 1-acre, "one size fits all" limitation on residential development is not the right approach and will **disproportionately** impact property owners with larger parcels.
- Has the County considered the financial impacts of this proposal and the genuine possibility that it will dramatically reduce our County's property tax revenue? Having lost their ability to develop their property reasonably, landowners will likely record Williamson-Act easements on most of their properties, exempting them from paying property taxes. This would severely reduce the County's tax revenue base and its ability to pay for the public services it currently provides. **This will impact everyone in Napa County, not just landowners!**
- The Proposal will significantly **limit the ability** of **family-owned farms and vineyards** to develop their properties to provide for multi-generational housing, which is very needed to provide for the future viability of these types of properties.
- With harvest underway, **this is not the right time** for the County to propose this far-reaching and potentially negatively impactful zoning amendment. I find it equally concerning that Staff's August 18th communication stated that it is anticipated that the Board may consider the proposal before year-end. This issue deserves a more thoughtful, studied, and good process that stakeholders can participate in that does not directly conflict with harvest season. My understanding is that this issue was discussed years ago but did not progress further. **It looks pretty inappropriate that it is now being rushed through with little to no "stakeholder" input.**
- Has the County considered the potential **visual impacts** of this proposal in that it will strongly encourage 2-story development and dramatically impact the views from adjacent properties and public roads?
- Enacted by the County in 1968, over 50 years ago, the **"Ag Preserve" is working very well and continues to be our best tool to preserve Napa's unique agricultural character.** However, the Ag Preserve provides very local zoning and significantly limits this type of residential development. Are further restrictions truly needed? It seems the County should be focused on far more pressing issues.

Given these concerns, I would strongly encourage the County Planning Commission and Board of Supervisors to not support the Proposed Zoning Amendment without more thorough study and adequate opportunity for stakeholders to review the proposal.

Sincerely,
John Hurley



HurleyHafen, LLC

[1119 3rd Avenue](#)

[Napa, CA 94558](#)

O 707 819 2840

M 415 317 2556

[www.hurleyhafen.com](#)

October 6, 2021

RE: **PROPOSED ZONING AMENDMENT TO TITLE 18 (ZONING ORDINANCE) FOR A NEW RESIDENTIAL DEVELOPMENT ENVELOPE ORDINANCE**

To: Napa County Supervisors, Planning Commissioners, and Planning Department

I have questions and concerns regarding the Proposed Zoning Amendment that was sent on August 18th. I am also requesting a more appropriate "Stakeholder Outreach" process that allows the County and its citizens to consider this proposal in more depth. I would like this letter to be included in the Staff Report being prepared for the Board of Supervisor's workshop on October 19, 2021.

There are many matters that need further discussion:

A one-acre, "one size fits all" limitation on residential development is not the right approach and will **disproportionately impact** property owners with larger parcels.

The County has not adequately considered the financial impacts of this proposal and the very real possibility that it will dramatically reduce the County's property tax revenue. If, after I lost the ability to reasonably develop my property, I would likely record a Williamson-Act easement on my property exempting me from paying property taxes. This will in turn reduce the County's tax revenue base and reduce its ability to pay for needed public services.

This will impact everyone in Napa County, not just landowners!

The Proposal will significantly **limit the ability for family-owned farms and vineyards** to develop their properties to provide for multi-generational housing which is very needed to provide for the future viability of these types of properties.


With harvest underway, **this is not the right time** for the County to propose this type of over-reaching zoning amendment with such probable negative impact. I find it equally concerning that Staff's August 18th communication stated that it is anticipated that the Board may consider the proposal before year-end. This issue deserves a more thoughtful, studied, and reasonable process in which citizens can participate. Also, one that does not directly conflict with harvest season. My understanding is that this issue was discussed years ago but did not progress further. **It seems very inappropriate that it is now being rushed through with little to no "stakeholder" input.**

Has the County considered the potential **visual impacts** of this proposal in that it will strongly encourage 2-story development and dramatically impact the views from adjacent properties and public roads?

The **"Ag Preserve" is working very well and has for over 50 years. It continues to be our best tool to preserve Napa's unique agricultural character** as it already provides for very restricted zoning and therefore significantly limits this type of residential development. Are further restrictions really needed?

I **do not want** the County Planning Commission and Board of Supervisors to support the Proposed Zoning Amendment without more thorough study and adequate opportunity for county citizens to review the proposal.

Sincerely,



Name: Robert Zellmer, MD

Address: 2600 Atlas Peak Road

Mail: 1370 Trancas Street #386

Napa, CA 94558

From: [Hillary O'Connell - Ryan](#)
To: [McDowell, John](#); [Bordona, Brian](#); [Morrison, David](#); [Anderson, Laura](#); [PublicComment](#)
Subject: PROPOSED ZONING AMENDMENT TO TITLE 18 (ZONING ORDINANCE) FOR A NEW RESIDENTIAL DEVELOPMENT ENVELOPE ORDINANCE
Date: Thursday, October 7, 2021 4:28:42 PM

[External Email - Use Caution]

RE: PROPOSED ZONING AMENDMENT TO TITLE 18 (ZONING ORDINANCE) FOR A NEW RESIDENTIAL DEVELOPMENT ENVELOPE ORDINANCE

ATTN: Napa County Supervisors, Planning Commissioners and Planning Department

To Whom it May Concern:

I am writing today to express my questions and concerns regarding the Proposed Zoning Amendment that was sent on August 18th along with my request for a more appropriate "Stakeholder Outreach" process that allows the County and stakeholders to consider this proposal in more depth. I would like my letter to be included in the Staff Report being prepared for the Board of Supervisor's workshop on October 19, 2021, or if received after the Staff Report is issued, provided to the Board at the workshop.

This proposal raises several significant issues and concerns that all need further discussion:

- A 1-acre, "one size fits all" limitation on residential development is not the right approach and will **disproportionately impact** property owners with larger parcels.
- Has the County considered the financial impacts of this proposal and the very real possibility that it will dramatically reduce our County's property tax revenue? Having lost their ability to reasonably develop their property, landowners will likely record Williamson-Act easements on the majority of their properties exempting them from paying property taxes. This would severely reduce the County's tax revenue base and its ability to

pay for the public services it provides currently. **This will impact everyone in Napa County, not just landowners!**

- The Proposal will significantly **limit the ability for family-owned farms and vineyards** to develop their properties to provide for multi-generational housing which is very needed to provide for the future viability of these types of properties.
- With harvest underway, **this is not the right time** for the County to propose this type of far-reaching and potentially negatively impactful zoning amendment. I find it equally concerning that Staff's August 18th communication stated that it is anticipated that the Board may consider the proposal before year-end. This issue deserves a more thoughtful, studied and reasonable process that stakeholders can take part in that does not directly conflict with harvest season. My understanding is that this issue was discussed years ago but did not progress further. **It seems very inappropriate that it is now being rushed through with little to no "stakeholder" input.**
- Has the County considered the potential **visual impacts** of this proposal in that it will strongly encourage 2-story development and dramatically impact the views from adjacent properties and public roads?
- Enacted by the County in 1968, over 50 years ago, the **"Ag Preserve" is working very well and continues to be our best tool to preserve Napa's unique agricultural character.** The Ag Preserve provides for very restricted zoning and therefor significantly limits this type of residential development. Are further restrictions truly needed? It seems the County should be focused on far more pressing issues.

Given these concerns, I would strongly encourage the County Planning Commission and Board of Supervisors to not support the Proposed Zoning Amendment without more thorough study and adequate opportunity for stakeholders to review

the proposal.

Sincerely,

Hillary Ryan

Hillary Ryan
707-312-2105

From: [sarah.collins](#)
To: [McDowell, John](#)
Subject: Legislation Concern
Date: Friday, October 8, 2021 1:14:56 PM

[External Email - Use Caution]

RE: PROPOSED ZONING AMENDMENT TO TITLE 18 (ZONING ORDINANCE) FOR A NEW RESIDENTIAL DEVELOPMENT ENVELOPE ORDINANCE

ATTN: Napa County Supervisors, Planning Commissioners and Planning Department

To Whom it May Concern:

I am writing today to express my questions and concerns regarding the Proposed Zoning Amendment that was sent on August 18th along with my request for a more appropriate "Stakeholder Outreach" process that allows the County and stakeholders to consider this proposal in more depth. I would like my letter to be included in the Staff Report being prepared for the Board of Supervisor's workshop on October 19, 2021, or if received after the Staff Report is issued, provided to the Board at the workshop.

This proposal raises several significant issues and concerns that all need further discussion:

- A 1-acre, "one size fits all" limitation on residential development is not the right approach and will **disproportionately impact** property owners with larger parcels.
- Has the County considered the financial impacts of this proposal and the very real possibility that it will dramatically reduce our County's property tax revenue? Having lost their ability to reasonably develop their property, landowners will likely record Williamson-Act easements on the majority of their properties exempting them from paying property taxes. This would severely reduce the County's tax revenue base and its ability to pay for the public services it provides currently. **This will impact everyone in Napa County, not just landowners!**
- The Proposal will significantly **limit the ability for family-owned farms and vineyards** to develop their properties to provide for multi-generational housing which is very needed to provide for the future viability of these types of properties.
- With harvest underway, **this is not the right time** for the County to propose this type of far-reaching and potentially negatively impactful zoning amendment. I find it equally concerning that Staff's August 18th communication stated that it is anticipated that the Board may consider the proposal before year-end. This issue deserves a more thoughtful, studied and reasonable process that stakeholders can take part in that does not directly conflict with harvest season. My understanding is that this issue was discussed years ago but did not progress further. **It seems very inappropriate that it is now being rushed through with little to no "stakeholder" input.**
- Has the County considered the potential **visual impacts** of this proposal in that it will strongly encourage 2-story development and dramatically impact the views from adjacent properties and public roads?
- Enacted by the County in 1968, over 50 years ago, the **"Ag Preserve" is working very well and continues to be our best tool to preserve Napa's unique agricultural character.** The Ag Preserve provides for very restricted zoning and therefor significantly limits this type of residential development. Are further restrictions truly needed? It seems the

County should be focused on far more pressing issues.

Given these concerns, I would strongly encourage the County Planning Commission and Board of Supervisors to not support the Proposed Zoning Amendment without more thorough study and adequate opportunity for stakeholders to review the proposal.

Sincerely,

Sarah Collins

1646 B St.

Napa, CA 94559

From: [Matt Tunney](#)
To: [McDowell, John](#); [Bordona, Brian](#); [Morrison, David](#); [Anderson, Laura](#); [PublicComment](#)
Subject: Proposed AP Zoning Amendment
Date: Monday, October 11, 2021 9:22:21 PM

[External Email - Use Caution]

RE: PROPOSED ZONING AMENDMENT TO TITLE 18 (ZONING ORDINANCE) FOR A NEW RESIDENTIAL DEVELOPMENT ENVELOPE ORDINANCE

ATTN: Napa County Supervisors, Planning Commissioners and Planning Department

To Whom it May Concern:

I am writing today to express my questions and concerns regarding the Proposed Zoning Amendment that was sent on August 18th along with my request for a more appropriate "Stakeholder Outreach" process that allows the County and stakeholders to consider this proposal in more depth. I would like my letter to be included in the Staff Report being prepared for the Board of Supervisor's workshop on October 19, 2021, or if received after the Staff Report is issued, provided to the Board at the workshop.

This proposal raises several significant issues and concerns that all need further discussion:

- A 1-acre, "one size fits all" limitation on residential development is not the right approach and will **disproportionately impact** property owners with larger parcels.
- Has the County considered the financial impacts of this proposal and the very real possibility that it will dramatically reduce our County's property tax revenue? Having lost their ability to reasonably develop their property, landowners will likely record Williamson-Act easements on the majority of their properties exempting them from paying property taxes. This would severely reduce the County's tax revenue base and its ability to

pay for the public services it provides currently. **This will impact everyone in Napa County, not just landowners!**

- The Proposal will significantly **limit the ability for family-owned farms and vineyards** to develop their properties to provide for multi-generational housing which is very needed to provide for the future viability of these types of properties.
- With harvest underway, **this is not the right time** for the County to propose this type of far-reaching and potentially negatively impactful zoning amendment. I find it equally concerning that Staff's August 18th communication stated that it is anticipated that the Board may consider the proposal before year-end. This issue deserves a more thoughtful, studied and reasonable process that stakeholders can take part in that does not directly conflict with harvest season. My understanding is that this issue was discussed years ago but did not progress further. **It seems very inappropriate that it is now being rushed through with little to no "stakeholder" input.**
- Has the County considered the potential **visual impacts** of this proposal in that it will strongly encourage 2-story development and dramatically impact the views from adjacent properties and public roads?
- Enacted by the County in 1968, over 50 years ago, the **"Ag Preserve" is working very well and continues to be our best tool to preserve Napa's unique agricultural character.** The Ag Preserve provides for very restricted zoning and therefor significantly limits this type of residential development. Are further restrictions truly needed? It seems the County should be focused on far more pressing issues.

Given these concerns, I would strongly encourage the County Planning Commission and Board of Supervisors to not support the Proposed Zoning Amendment without more thorough study and adequate opportunity for stakeholders to review

the proposal.

Sincerely,

Matt & Stephaney Tunney
1252 Rockland Rd., St. Helena

From: [Rick Claes](#)
To: [PublicComment](#); [McDowell, John](#); [Bordona, Brian](#); [Morrison, David](#); [Anderson, Laura](#)
Subject: PROPOSED ZONING AMENDMENT TO TITLE 18 (ZONING ORDINANCE) FOR A NEW RESIDENTIAL DEVELOPMENT ENVELOPE ORDINANCE
Date: Tuesday, October 12, 2021 9:59:48 AM

[External Email - Use Caution]

ATTN: Napa County Supervisors, Planning Commissioners and Planning Department

To Whom it May Concern:

We are the owners of 5442 Trubody Lane, Napa, CA 94558 and we are writing today to express our questions and concerns regarding the Proposed Zoning Amendment that was sent on August 18th along with our request for a more robust and transparent “Stakeholder Outreach” process that allows the County and stakeholders to consider this proposal in more depth. We would like this email to be included in the Staff Report being prepared for the Board of Supervisor’s workshop on October 19, 2021, or if received after the Staff Report is issued, provided to the Board at the workshop.

This proposal raises several significant issues and concerns that all need further discussion:

- A 1-acre, “one size fits all” limitation on residential development is not the right approach and will **disproportionately impact** property owners with larger parcels.
- Has the County considered the financial impacts of this proposal and the very real possibility that it will dramatically reduce our County’s property tax revenue? Having lost their ability to reasonably develop their property, landowners will likely record Williamson-Act easements on the majority of their properties exempting them from paying property taxes. This would severely reduce the County’s tax revenue base and its ability to pay for the public services it provides currently. **This will impact everyone in Napa County, not just landowners!**
- The Proposal will significantly **limit the ability for family-owned farms and vineyards** to develop their properties to provide for multi-generational housing which is very needed to provide for the future viability of these types of properties.
- With harvest underway, **this is not the right time** for the County to propose this type of far-reaching and potentially negatively impactful zoning amendment. We find it equally concerning that Staff’s August 18th communication stated that it is anticipated that the Board may consider the proposal before year-end. This issue deserves a more thoughtful, studied and reasonable process that stakeholders can take part in that does not directly conflict with harvest season. My understanding is that this issue was discussed years ago but did not progress further. **It seems very inappropriate that it is now being rushed through with little to no “stakeholder” input.**
- Has the County considered the potential **visual impacts** of this proposal in that it will strongly encourage 2-story development and dramatically impact the views from adjacent properties

and public roads?

- Enacted by the County in 1968, over 50 years ago, the **“Ag Preserve” is working very well and continues to be our best tool to preserve Napa’s unique agricultural character**. The Ag Preserve provides for very restricted zoning and therefor significantly limits this type of residential development. Are further restrictions truly needed? It seems the County should be focused on far more pressing issues.
- We believe that the **Stakeholder Outreach efforts to date have been lackluster**. Although we have owned our property for more than one year, we only heard of the pending Zoning Amendment from a concerned neighbor that “thought we should be aware of what’s going on.”

Given these concerns, we would strongly encourage the County Planning Commission and Board of Supervisors to not support the Proposed Zoning Amendment without more thorough study and adequate opportunity for stakeholders to review and provide thoughtful comment on the proposal.

Sincerely,

Rick Claes and Traci Sanderson
5442 Trubody Lane
Napa, CA 94558



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-979

TO: Board of Supervisors
FROM: Thomas Zeleny - Interim County Counsel
REPORT BY: Laura Anderson - Deputy County Counsel
SUBJECT: Scarlett Winery Appeal Findings of Fact

RECOMMENDATION

SET MATTER 2:00 PM - 10 Minutes Scarlett Winery

County Counsel requests consideration and adoption of a Resolution of Findings of Fact and Decision on Appeal regarding an appeal filed by George and Nancy Montgomery (Appellant) to a decision by the Napa County Planning Commission on January 15, 2020, to approve an application submitted by Sherrett Reicher, Alsace Company, LTD (Applicant) for Use Permit No. P16-00428-UP to construct and operate a new 30,000 gallon per year winery known as the Scarlett Winery as further described in the Staff Report prepared for this matter. The project is located on an approximately 47.88 acre site at 1052 Ponti Road, which intersects with Skellenger Lane just west of Silverado Trail, St. Helena, CA; APN: 030-280-010 (the Property).

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Revised Mitigated Negative Declaration (Revised MND). According to the proposed Revised MND, the proposed project would not have any potentially significant environmental impacts after implementation of mitigation measures proposed for the following area: Transportation. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

EXECUTIVE SUMMARY

At the appeal hearing on August 24, 2021, the Board heard and considered evidence submitted from Appellant, the Applicant, Staff and members of the public regarding the appeal. After considering all of the evidence presented, the Board closed the public hearing and adopted a motion of intent to deny the appeal filed by Appellant and uphold the Planning Commission's approval of the Scarlett Winery subject to the revised Conditions of Approval. The Board directed Staff to return on October 19, 2021, with a Resolution of Findings of Fact and Decision on Appeal that reflects the Board's intent as expressed on August 24, 2021. Staff has prepared a proposed Resolution that accurately reflects the Board's intent as expressed on August 24, 2021.

The proposed Resolution was shared with Appellant's and Applicant's respective counsel and neither had substantive comments. The public hearing is closed and public comment is limited to whether or not the proposed Resolution accurately reflects the Board's intent as expressed on August 24th.

PROCEDURAL REQUIREMENTS:

1. Staff Report.
2. Chair invites Appellant, the Applicant, and interested parties to comment on the proposed findings.
3. Motion, second, discussion, and vote on the Resolution.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?

No

County Strategic Plan pillar addressed:

Effective and Open Government

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Consideration and possible adoption of a Revised Mitigated Negative Declaration (Revised MND). According to the proposed Revised MND, the proposed project would not have any potentially significant environmental impacts after implementation of mitigation measures proposed for the following area: Transportation. The project site is not included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

At the appeal hearing on August 24, 2021, the Board heard and considered evidence submitted from Appellant, the Applicant, Staff and members of the public regarding the appeal. After considering all of the evidence presented, the Board closed the public hearing and adopted a motion of intent to deny the appeal filed by Appellant and uphold the Planning Commission's approval of the Scarlett Winery subject to the revised COA. Per the Board's direction, Staff revised the conditions of approval as follows:

COA No. 4.2 (g) was added to clearly identify that tours and tastings are prohibited in the landscaped areas per the project's redesigned plans required by COA No. 6.15 (d).

COA No. 4.3 (f) clarifies that no marketing events may occur on the West Terrace Deck.

COA No. 4.3 was revised to clarify that shuttle service is required for all 100, 125 and 200 person marketing events. For the smaller events, the permittee shall prepare an event-specific plan if the event will exceed the available on-site parking.

COA No. 6.15 (d) has been revised to require that the final architectural drawings and landscape plans remove all references to outdoor "AB 2004 Picnic Areas" and that those areas be shown only as landscape areas.

The Board directed Staff to return on October 19, 2021, with a Resolution of Findings of Fact and Decision on Appeal that reflects the Board's intent as expressed on August 24, 2021. Staff has prepared a proposed

Resolution that accurately reflects the Board's intent as expressed on August 24, 2021. The proposed Resolution and revised COA were shared with Appellant's and Applicant's respective counsel and neither had substantive comments. The public hearing is closed. Public comment on this item is limited to whether the proposed Resolution accurately reflects the Board's intent as expressed on August 24, 2021. Staff recommends that the Board adopt the Resolution and instruct the Clerk of the Board to serve the Resolution in compliance with Napa County Code Section 2.88.090(D).

**BEFORE THE BOARD OF SUPERVISORS
OF NAPA COUNTY**

In the Matter of:

An appeal filed by George and Nancy Montgomery (Appellant) to a 4-1 decision by the Napa County Planning Commission on January 15, 2020, to approve an application submitted by Sherrett Reicher, Alsace Company, LTD (Applicant) for Use Permit No. P16-00428-UP to construct and operate a new 30,000 gallons per year winery known as the Scarlett Winery and to allow: a) construction of a winery building consisting of two detached structures (a two story 4,514 sf hospitality/administration building and a one story 18,022 sf production building) separated between the east outdoor terrace area and a landscaped area; b) construction of a 4,725 sf covered outdoor crush pad - crush will occur inside the winery production building; c) tours and tastings by appointment only with a maximum of 15 visitors per day and a weekly maximum of 80 visitors (Daily tours and tastings may be conducted on the West Terrace Deck); d) a marketing program of two (2) food and wine pairing lunch events per month with a maximum of 10 persons; one (1) wine club release event per year with a maximum of 100 guests; one (1) large event per year with a maximum of 125 guests; and one (1) wine club release event per year for groups of up to 200 guests with up to 10 event staff. Events to be held between 10 a.m. and 6 p.m. or 6 p.m. and 10 p.m. Larger events (100, 125, and 200 guests) to be held on weekends only. Portable toilets to be utilized during any event hosting greater than 75 guests. Shuttle service used for events over 100 guests. No marketing events shall be conducted in the outdoor picnic area and on the West Terrace Deck. Daily tours and tastings by visitors will not occur on days when events are held with more than 100 guests in attendance. Food and Wine Pairings – Food prepared in the commercial kitchen or catered; e) six (6) full-time, two (2) part-time employees and two (2) employees during harvest for vineyard activities only; f) a commercial kitchen for some food preparation and use as a

RESOLUTION NO. 2021-_____

**FINDINGS OF FACT AND
DECISION ON APPEAL**

caterers' staging area for some of the marketing events; g) on-premises consumption of wines produced on-site may occur solely within the hospitality building designated tasting areas in accordance with Business and Professions Code Sections 23358, 23390 and 23396.5; h) winery hours of operation daily 6 a.m. – 6 p.m. (Non-harvest production hours) and daily visitation hours of operation daily 10 a.m. – 6 p.m.; i) construction of seven (7) visitor and five (5) employee parking spaces both with a handicapped space and one area for a high occupancy vehicle for a total of 13 spaces; j) installation of a wastewater system; k) installation of a regulated transient non-community water system; l) installation of two (2) 20,000-gallon domestic water storage tanks and one (1) 100,000-gallon fire water storage tank; m) installation of an entry gate and winery sign; and n) all project spoils to be disposed of on-site. The project is located on an approximately 47.88 acre site at 1052 Ponti Road, which intersects with Skellenger Lane just west of Silverado Trail, St. Helena, CA; APN: 030-280-010 (the Property). The site is designated as Agricultural Resource (AR) and Agriculture, Watershed and Open Space (AWOS) in the 2008 General Plan and is in the Agricultural Preserve (AP) and Agricultural Watershed (AW) Zoning Districts.

WHEREAS, on November 22, 2016, Sherrett Reicher, Alsace Company, LTD (Applicant) submitted an application to the Planning, Building and Environmental Services (PBES) Department for approval of Use Permit No. P16-00428-UP to construct and operate a new 30,000 gallons per year winery known as the Scarlett Winery (Scarlett, the Winery or the Project) including construction of a winery building consisting of two detached structures, construction of a 4,725 sf covered outdoor crush pad, tours and tastings by appointment only with a maximum of 15 visitors per day and a weekly maximum of 80 visitors, a marketing program and other related improvements; and

WHEREAS, resubmittal applications with additional information about the Winery's operations were received on April 20, 2017 and February 15, 2018. The Winery application was determined to be complete on July 23, 2019; and

WHEREAS, the project is located on an approximately 47.88 acre site at 1052 Ponti Road, which intersects with Skellenger Lane just west of Silverado Trail, St. Helena, CA; APN: 030-280-010 (the Property). The site is designated as Agricultural Resource (AR) and

Agriculture, Watershed and Open Space (AWOS) in the 2008 General Plan and is in the Agricultural Preserve (AP) and Agricultural Watershed (AW) Zoning Districts; and

WHEREAS, on January 13, 2017, a New Project Submittal Courtesy Notice (dated January 12, 2017) was mailed to all property owners within 1,000 feet of the subject property and emailed to those persons on the general CEQA document notification list. The size of the Project and a description of the marketing events were incorrect, and a corrected version of the courtesy notice dated January 20, 2017 was mailed out on January 23, 2017; and

WHEREAS, after a preliminary review of the Project, the PBES Department determined that the Project might result in a significant environmental effect and therefore required preparation of an Initial Study consistent with the requirements of CEQA to determine if the Project may have a significant effect on the environment; and

WHEREAS, based upon the Initial Study and CEQA review, the PBES Department prepared a Mitigated Negative Declaration (or MND) for the Project. The MND was released for public review on September 11, 2019, for a 30-day public comment period; and

WHEREAS, on September 11, 2019, the Public Notice for the Planning Commission hearing on October 2, 2019 and Notice of Intent to Adopt a Mitigated Negative Declaration were mailed to all property owners within 1,000 feet of the subject property as well as any other persons who had requested notice. It should be noted that the County's requirements to notice all property owners within 1,000 feet far exceeds the State mandate of noticing all owners within 300 feet. Notice was also provided to those persons on the general CEQA document notification list. The Notice was published in the Napa Valley Register on September 12, 2019; and

WHEREAS, on October 2, 2019, the Planning Commission held a public hearing regarding the Scarlett Winery. Several letters and emails were received prior to the hearing and comments at the hearing focused on the following issues: 1) access to the Project site via Ponti Road including the adequacy of the right-of-way width, potential harm to existing trees and the feasibility of relocating the winery access to Silverado Trail; 2) potential noise impacts of the winery on surrounding residences; 3) groundwater availability and use, and the adequacy of the Project's Water Availability Analysis (WAA); 4) shuttle service to the winery for marketing events; and 5) general land use concerns regarding proposed visitation, marketing, and production. Given these comments, the Commission opened the hearing, heard the Applicant's presentation, solicited comments from the public and Commissioners, and continued the item to December 4, 2019, so that Staff could address the concerns raised. The Commission also requested that the Applicant and neighbors meet to discuss and address issues before the next meeting; and

WHEREAS, on December 4, 2019, Staff requested additional time to provide written responses on the various issues. The Commission continued the hearing to January 15, 2020; and

WHEREAS, on January 15, 2020, the Planning Commission held a continued public hearing. On January 6, 2020 Staff received correspondence from the law firm of Shute, Mihaly and Weinberger on behalf of George and Nancy Montgomery regarding additional traffic and

road issues. The day before the January 15th hearing, Staff provided to the Planning Commission and posted on the County's project website Staff's supplemental analysis responding to the Montgomery's counsel's correspondence; and

WHEREAS, on January 15, 2020, Staff presented an overview of the issues that had been raised including the following: groundwater availability and the adequacy of the Project's WAA; potential storm water issues; potential noise impacts of the winery on surrounding residences; grape sourcing on-haul and off-haul; Ponti Road and the right-of-way width, safety, and potential harm to existing trees; adequacy of parking for visitation, employees and marketing events and the use of shuttle service; the winery design and potential impact on the surrounding neighborhood; alternative project access from Silverado Trail; and the adequacy of the Traffic Impact Study prepared by Crane Transportation Group (CTG); and

WHEREAS, Public Works Director Steve Lederer also provided the Commission with the history of when the road became part of the County's network, and the feasibility of and issues associated with relocating winery access to Silverado Trail (Certified Planning Commission Hearing Transcript January 15, 2020, pages 40-43:4-6). County Engineering Services Manager Patrick Ryan provided additional testimony to the Commission regarding the adequacy of Ponti Road to serve both the proposed winery operations and maintain safe ingress/egress for the surrounding residential neighborhood and vineyard operations currently utilizing the road (Certified Planning Commission Hearing Transcript January 15, 2020, page 53:4-8); and

WHEREAS, the Commission's deliberations primarily focused on potential winery impacts perceived by the neighbors, whether or not the winery's access should be relocated to Silverado Trail, and Applicant-volunteered concessions that included: 1) use of shuttle buses for all marketing events with over 75 guests; 2) removal of on-site wine consumption (picnicking) from the West Terrace Deck; and 3) installation of two turn-out areas on the east side of Ponti Road on the adjacent parcel [APN 030-280-010] owned by Applicant to further enhance the safety of Ponti Road. Ultimately, the Commission revised the conditions of approval to eliminate marketing events from occurring on the West Terrace Deck and within the outdoor picnic area adjacent to the guest parking area (as designated on the Architectural Drawings Sheet UP A-2 dated January 31, 2018). The Commission also restricted use of the West Terrace Deck to daily tours and tastings only and required the Applicant to notify surrounding property owners a minimum of 30 days prior to marketing events of 100 or more guests (COA No. 4.20(c)). The conditions also memorialized two turnout areas proposed by the Applicant on the east side of Ponti Road (COA No. 6.15(c)); and

WHEREAS, on January 15, 2020, after considering all public testimony and all evidence submitted, the Planning Commission closed the public hearing, deliberated, and voted (4:1– AYES: Gallagher, Whitmer, Dameron and Mazotti; NO: Cottrell) to approve Use Permit No. P16-00428-UP; and

WHEREAS, on January 28, 2020, the project approval letter with the final adopted conditions of approval was forwarded to the Applicant and mailed to all the property owners along Ponti Road including the Montgomerys; and

WHEREAS, on January 30, 2021, subsequent to the Commission's decision and within the prescribed period, Appellant George and Nancy Montgomery (Appellant) submitted a timely Notice of Intent to Appeal the Planning Commission's decision to approve the Project and subsequently filed a timely Appeal Packet on February 12, 2020 (collectively the Appeal). The Appeal Packet specified the grounds on which the Appellant's Appeal is based, and are set forth with more particularity therein¹; and

WHEREAS, in accordance with Napa County Code (NCC) Section 2.88.080(A), a hearing on the Appeal was scheduled before the Board of Supervisors (the Board) for May 5, 2020, a date at least 15 but no more than 90 days from the date of submittal of the Appeal; and

WHEREAS, public notices of the appeal hearing were mailed and provided to all parties who received notice of the Planning Commission hearing on January 15, 2020. The notice ran in the newspaper on April 24, 2020. On May 5, 2020, the public hearing was opened and continued to July 14, 2020 to accommodate all parties' schedules; and

WHEREAS, prior to the continued appeal hearing on July 14, 2020, the former Chair issued a Good Cause Determination that found good cause existed for the record to be augmented with the Papadimos Group Report dated February 4, 2020, submitted by Appellant. The Chair also authorized the parties the opportunity to submit additional evidence, legal briefing and analysis on the topic of noise. To give Staff ample time to engage a noise consultant to review the Papadimos Report and to prepare a supplemental noise analysis, on July 14, 2020, the appeal hearing was dropped with the consent of Applicant and Appellant from the Board's calendar to be re-noticed for a future date; and

WHEREAS, in October 2020, Staff engaged noise consultant Illingworth & Rodkin, Inc. to review the noise analysis in the MND prepared for the Planning Commission (the Original MND). As a result of the COVID pandemic and stay at home orders, the consultant was unable to visit the Property for some time and it took longer than usual to receive the supplemental noise analysis. The Noise and Vibration Assessment was completed by Illingworth & Rodkin, Inc. on March 18, 2021 (I&R Noise Assessment). The I&R Noise Assessment relied on site-specific noise measurements taken at the Winery and in the vicinity and reaffirmed and amplified the County's prior conclusions in the Original MND that the Winery would not result in any significant noise impacts; and

WHEREAS, on March 25, 2021, the I&R Noise Assessment was provided to Appellant and Applicant for review. The parties were given an opportunity to submit additional evidence, legal briefing and analysis on the topic of noise; and

WHEREAS, the I&R Noise Assessment results were incorporated into the Revised MND and included in Staff's responses to the grounds raised in the Appeal. Changes made to the

¹ The complete Appeal Packet is on file with the Clerk of the Board of Supervisors.

Revised MND were identified using strikethrough (indicating deletions) and italicized bold fonts (indicating additions or modified elements or analysis pertinent to this analysis. No new impacts associated with the I&R Noise Assessment were identified. The I&R Noise Assessment merely amplified and clarified the previous determinations in the Original MND that the Winery would not generate significant noise impacts. As of July 1, 2020, lead agencies are required to consider Vehicle Miles Travel (VMT) as part of the CEQA analysis. Staff also updated the Transportation section of the Revised MND to reflect the County's VMT program. Staff updated the Hydrology section also to reflect the recent drought declarations made by the State and County. Since these revisions to the Initial Study clarified and amplified the existing analysis and conclusions and do not result in new or more significant impacts, the Revised MND was not required to be recirculated (CEQA Guidelines Section 15073.5 (c)); and

WHEREAS, the appeal hearing was rescheduled for August 24, 2021, and public notices of the new hearing date were mailed and provided to all parties who received notice of the Planning Commission hearing on January 15, 2020. The notice ran in the newspaper on August 6, 2021; and.

WHEREAS, the public comment period on this appeal will have run for 492 days by the time the hearing was held on August 24, 2021; and.

WHEREAS, on August 24, 2021, at a duly noticed continued public hearing on the Appeal, the Board heard and considered all evidence and testimony regarding the Appeal; the Board closed the public hearing and adopted a motion of intent to: (1) reject each of the grounds of the Appeal and deny the Appeal in its entirety; (2) adopt the Revised MND and Mitigation, Monitoring and Reporting Program for the Project; (3) uphold the Planning Commission's approval of the Project; and (4) approve Use Permit No. P16-00428-UP for the Scarlett Winery subject to Revised Conditions of Approval; and

WHEREAS, the Board further directed County Counsel to prepare a resolution containing Findings of Fact and Decision on Appeal in support of its proposed decision and to present those findings to the Board for consideration at its meeting on October 19, 2021; and

WHEREAS, on October 19, 2021, this proposed resolution containing the Findings of Fact and Decision on Appeal was presented to the Board for possible adoption; and

WHEREAS, this proposed resolution containing the Findings of Fact and Decision on Appeal having been presented to the Board for possible adoption at a regular meeting of the Board on October 16, 2021, and interested persons having been given an opportunity to address the Board regarding the proposed resolution.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors finds, determines, concludes and decides as follows:

Section 1. Recitals.

The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Conduct of Appeal.

A. NCC Section 2.88.090 (B) provides that if the hearing before the approving authority was recorded electronically or by a certified court reporter then upon request by the appellant or any interested party and upon a showing of good cause, the Board may permit additional evidence to be presented which could have been presented at the time of the decision appealed from was made but was not. Here, the Planning Commission proceedings were recorded electronically and transcripts of the Planning Commission proceedings were provided to the Board.

B. To clarify the County's procedural requirements and expectations regarding land use appeals, the Board of Supervisors has an adopted policy that requires that the parties attend a pre-hearing conference with the parties and the Chair of the Board to discuss estimates on presentation lengths, scope of evidence, and testimony to be presented, together with witness lists.

C. A pre-hearing conference was initially held on May 5, 2020 with Appellant's counsel, Applicant's representative and counsel, former Chair Dillon and a Deputy County Counsel. Former Chair Dillon issued a Good Cause Determination that found good cause existed for the Planning Commission record to be augmented with a noise report prepared by the Papadimos Group Report (dated February 4, 2020), submitted by Appellant with the Appeal. The Chair also authorized the parties to submit additional evidence, legal briefing and analysis on the topic of noise.

D. On May 13, 2021, current Chair Pedroza held a follow-up pre-hearing conference with the parties and allowed Appellant and Applicant the opportunity to submit supplemental evidence only regarding the topic of noise and/or supplemental information related to Appellant's grounds of appeal not to exceed ten pages including exhibits and attachments.

E. On June 18, 2021, Appellant's counsel submitted two supplemental packets of information. The first packet was 63 pages longer than the ten-page limit imposed by the Chair at the pre-hearing conference (Appellant's Long Submittal). Appellant's counsel's second shorter packet was ten pages (Appellant's Short Submittal). Applicant's counsel submitted six pages of supplemental information.

F. On July 13, 2021, Chair Pedroza issued a Supplemental Good Cause Determination which found that good cause did not exist to augment the Planning Commission record with the new information in Appellant's Long Submittal for the reasons reflected in the Chair's Supplemental Good Cause Determination including but not limited to the submittal exceeded the maximum ten page limit set at the pre-hearing conference and included new evidence beyond the topic of noise. The Chair further found that good cause did not exist for augmentation of the Planning Commission record with a third traffic report from Appellant's counsel (the Griffin Cove dated June 8, 2021) attached to Appellant's Short Submittal. The record already includes two prior traffic reports prepared by Griffin Cove (one dated September 30, 2019 commenting on the Original MND and one dated January 2, 2020 providing further comments to the Planning Commission). The Chair further found that Appellant had ample opportunity to present evidence

and legal arguments on the topic of traffic to the Planning Commission and in Appellant's Appeal Packet. Also, supplemental evidence was limited by the Chair to the topic of noise.

G. On July 30, 2021, Appellant's counsel submitted a 23-page Good Cause letter including exhibits. The letter attempted to augment the record with new evidence, reargued cumulative impacts and asserted that the appeal hearing must be de novo. The County's procedures (NCC Section 2.88.090 (B)) allow oral not written argument in support of a request to overrule the Chair. The Clerk of the Board excluded the Good Cause letter from the materials considered by the Board but retained it as part of the record of the meeting.

H. On August 19, 2021, Appellant's counsel submitted a seven page letter reasserting Appellant's prior positions. At the pre-hearing conference, the Chair set June 18, 2021 as the deadline for submittal of supplemental legal argument by Appellant or Applicant. Appellant's submittal was untimely and per County Code Section 2.88.090 (B)(3), the Clerk of the Board excluded the letter from the materials considered by the Board but has retained it as part of the record of the meeting.

I. Pursuant to NCC Section 2.88.090 (B), the Chair's decision regarding exclusion of Appellant's four submittals referenced above is final unless one of the parties request that a majority of the Board overrule the decision. Appellant requested that a majority of the Board overrule the Chair's prior good cause determination.

J. On August 24, 2021, the Appeal hearing began with the Chair allowing Appellant's counsel the opportunity to convince a majority of the Board to overrule the Chair's prior determinations to exclude the four submittals referenced above. The Board heard and considered Appellant's request but declined to overrule the Chair.

K. As previously noted, Appellant's counsel's four submittals were excluded from the record of proceedings and materials considered by the Board but were retained by the Clerk of the Board as part of the record of the meeting.

Section 3. Findings of Fact and Conclusions of Law on Appeal.

The Board hereby makes the following findings of fact and conclusions of law in regards to each of the grounds for appeal as stated by Appellant in the Appeal²:

A. First Ground of Appeal.

Appellant's Position: Appellant claims that the sole means of access to the Winery would be from Ponti Road, a 15-foot wide local street, which does not meet the County Road and Street Standards (County RSS). The RSS states: "*All streets and roads, with the exception of agricultural special purpose roads and residential driveways, shall be constructed to provide a minimum of two 10-foot traffic lanes and a minimum of one foot of shoulder on each side of the roadway providing two-way traffic flow.*" Because Ponti Road is neither an agricultural special

² This Resolution summarizes the grounds of appeal. For the complete text of the Appeal, please see the actual Appeal dated February 11, 2020.

purpose road nor a residential driveway, the exceptions stated in the County RSS do not apply. Appellant asserts that the Project would add a sizable volume of traffic to a roadway that fails to meet the County's standards and this constitutes a significant environmental impact.

Findings and Decision: The Board finds and determines as follows:

“Section 2. Scope of Standards” of the County RSS clearly states that the County RSS apply to private roads and driveways and to newly constructed public roads. The RSS do not apply to existing public roads such as Ponti Road. If Ponti Road was proposed as a new public road today, it would have to comply with the standards based upon the classification of the road type. Ponti Road is approximately 0.54 miles long and ranges in width between 13.5-17 feet with an average width of approximately 15 feet. The County's authority over the road is from pavement edge to pavement edge. The Planning Commission heard and considered testimony provided by Public Works Director Steve Lederer that Ponti Road was brought into the County Road System around 1939 and that like many other historic roads in the County it does not meet current standards (Certified Planning Commission Hearing Transcript January 15, 2020, pages 40-41:4-11).

The CTG Traffic Study prepared for the Project identified the level of service for Ponti Road as LOS A, the best level of service for a road. According to the County's Winery Traffic Information/Trip Generation Sheet, as revised by County Staff in the Updated Use Permit Application materials, the proposed Project's daily traffic volumes and peak hour trips were calculated to be 38 vehicle trips with 14 trips occurring during the PM peak period on a typical weekday, 36 vehicle trips with 16 trips occurring during the PM peak period on a typical Saturday, and 43 vehicle trips with 18 trips occurring during the PM peak period on a Saturday during crush. Contrary to Appellant's assertion, these low traffic volumes on a road with the lowest level of congestion (LOS A) do not reasonably rise to a significant level.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision. Therefore, the Board denies the First Ground of Appeal and upholds the Planning Commission's approval of the Project.

B. Second Ground of Appeal.

Appellant's Position: Appellant asserts that the Project contemplates almost 170 vehicular trips associated with the largest marketing events, yet the MND failed to evaluate how this increased traffic would affect Ponti Road. The MND asserts that shuttle service will be employed for events that exceed 100 guests, however Appellant contends that there is no assurance that visitors will not try to access the Winery by car, travelling on Ponti Road, realizing there is insufficient parking, and then either attempting to park on Ponti Road or continuing to search for parking. Appellant claims that the MND fails to address the impacts of such a scenario and failed to provide any information about the number of shuttle buses that would be employed or the location of off-site parking.

Findings and Decision: The Board finds and determines as follows:

The County is not required to evaluate Appellant's speculative parking scenario. (*Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 CA3d 130 (expressions of generalized concerns and fears about traffic and parking impacts, and anecdotal statements about parking problems at another facility, are not substantial evidence). The County properly evaluated traffic resulting from the Winery including the 167 trips anticipated to be generated by the once a year 200-person marketing event. The large marketing event was conditioned to occur on weekends only (10 a.m. to 6 p.m. or 6 p.m. to 10 p.m.). This conservative number takes into account 10 event staff (20 trips), 200 visitors (143 trips) and two special event trucks (four trips) [Refer to the Use Permit Application Packet - Proposed Project Winery Traffic/Trip Generation Sheet (Revised) – Attachment E of the October 2, 2019 Planning Commission Staff Report]. The Applicant informed the Commission it envisioned using larger shuttle buses for larger events. Because shuttle service is required for all marketing events (COA Nos. 4.3(b), 4.3(c), and 4.3(d)), the estimated 167 trips for the largest event is overestimated and will likely be considerably lower.

The use of shuttles depends on the size and type of the event, as well as where visitors will originate, specific information regarding what shuttle service options (e.g., type and size of vehicle, specific pick-up and drop off locations, etc.) would be used and is not usually known until a winery becomes operational. (Staff Response to Comment Memorandum (Attachment C of the Planning Commission Staff Report of January 15, 2020).) Staff further informed the Planning Commission that wineries typically utilize valet service and park vehicles in production areas of the Winery and/or along existing vineyard rows to accommodate guests and/or catering staff. Project COA No. 4.3 requires the preparation of an event special parking plan which may include, but is not limited to, valet service or off-site parking and shuttle service to the Winery. Scarlett Winery would have just three "large" marketing events per year consisting of one event per year at 100, 125, 200 persons held on weekends only and possibly an Auction Napa Valley Event, if selected. Shuttle services would be required at all marketing events for 100, 125 and 200 guests (COA Nos. 4.3(b), 4.3(c) and 4.3(d)). Smaller marketing events were also permitted to occur with a maximum of 10 guests at two per month any day of the week during the hours of 10 a.m. to 6 p.m. or 6 p.m. to 10 p.m. No shuttle service was required for these events. Furthermore, daily tours and tastings visitors were restricted to not occur when events with more than 100 guests were in attendance.

No parking is permitted or proposed within the County's right-of-way or unpaved portions of Ponti Road. (COA No. 4.12). Project COA No. 4.20(b) requires the submittal of a Traffic Demand Management Plan for review and approval by the Planning Division and the Public Works Department and that Plan will provide more details regarding implementation of the Winery's shuttle program.

For all of these reasons, the Board finds that the Commission reasonably determined that none of the marketing events would adversely impact traffic on Ponti Road and the required shuttle service would alleviate any potential parking issues.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Second Ground of Appeal and upholds the Planning Commission's approval of the Project.

C. Third Ground of Appeal.

Appellant's Position: Appellant contends that the MND failed to analyze the traffic impacts associated with the proposed shuttle system or to evaluate how the width of these shuttle buses would affect operations along Ponti Road. Appellant further claims that the MND fails to identify the location of the off-site parking lot or analyze how roadways and intersections near this parking lot would be affected by the Project's traffic, thus preventing the public from ascertaining whether a shuttle system would address the Project's traffic impacts.

Findings and Decision: The Board finds and determines as follows:

As to the size and use of shuttle buses, the Board incorporates here by reference Findings and Decision as to the Second Ground of Appeal. Any proposed access drive and parking areas must comply with the latest edition of the Napa County Roads and Street Standards (COA No. 6.1(a) – and COA No. 6.1(d)). Such adopted standards are required to ensure adequate widths are maintained for all types of vehicles, their approaches, site distance requirements and turning movements of vehicles. In recommending approval of this winery Project, Engineering Services and the Department of Public Works evaluated the preliminary civil plans submitted for the Project and determined that the proposed connection at Ponti Road would comply with the RSS, which allows a fire apparatus vehicle to make a maneuver from Ponti Road onto the Project site. Since fire apparatus could make the maneuver, it was assumed that any conventional vehicle such as delivery truck, a standard vehicle, and shuttle vehicles typically used in Napa Valley would also be able to make that maneuver.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Third Ground of Appeal and upholds the Planning Commission's approval of the Project.

D. Fourth Ground of Appeal.

Appellant's Position: Appellant asserts that the MND fails to provide an analysis of how the Project's truck traffic would impact Ponti Road. Appellant's traffic analysis (the Griffin Cove Report) states that standard truck widths will consume over half of the available road width

(15 feet) along Ponti Road resulting in truck and shuttle traffic on Ponti Road precluding other vehicles from using the road at the same time.

Findings and Decision: The Board finds and determines as follows:

The three “large” marketing events (100, 125 and 200 persons per year) will be scheduled on weekends and daily tours and tastings will be prohibited to occur on those days to further reduce any potential for roadway conflicts.

Ponti Road currently consists of a paved, flat roadway varying in width from 13.5 feet to 17 feet with an average width of approximately 15 feet, as well as a direct line of sight along the entirety of Ponti Road making it adequate for a fire apparatus and other large vehicles to have clear visibility. The County’s standard for a lane width is 8 feet.

While the standard width of a truck could consume over half of the road, the clear visibility, the flat, paved nature of the road, the proposed turnouts and shoulder areas along Ponti Road would provide relief and reduce roadway conflicts. Applicant proposed (and the Project was conditioned to require) installation of two turnouts on the Applicant’s property located adjacent to the Winery property on the east side of Ponti Road (COA 6.15(c)). The shoulders (privately owned) throughout the length of Ponti Road exceed 20 feet and have bays in between the existing trees that can also be utilized by egressing/ingressing vehicles in an emergency and during large truck deliveries and shuttle vehicle arrivals and departures. Any proposed access drive and parking areas are required to comply with the latest edition of the Napa County Roads and Street Standards (COA No. 6.1(a)). These standards ensure adequate widths for any type of vehicles, their approaches, site distance requirements and turning movements of large vehicles including fire apparatus vehicles, delivery trucks and other standard vehicles, as well as, shuttle vehicles utilized in Napa County. The Board Findings and Decision as to the Third Ground of Appeal is incorporated here by reference.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission’s decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fourth Ground of Appeal and upholds the Planning Commission’s approval of the Project.

E. Fifth Ground of Appeal.

Appellant’s Position: Appellant asserts the MND erred in that it relied exclusively on a level of service (LOS) methodology to conclude that the Project would not have significant traffic impacts and that an agency may not rely exclusively on such a methodology if other substantial evidence in the record demonstrates that the Project may actually cause significant impacts.

Findings and Decision: The Board finds and determines that:

The selection of a threshold of significance is a policy decision that calls for the agency to exercise judgment based on scientific and other evidence (14 California Code of Regulations (CCR) Section 15064 (b)(1)). An agency's reliance on a reasonable standard for gauging the significance of an impact cannot be challenged on the ground that the impact would be significant under other recognized standards (*Citizens for Responsible Equitable Env't'l Dev. v. City of Chula Vista* (2011) 107 CA4th 327, 335).

Since 2015, the County has relied on a traffic memorandum prepared by traffic engineering firm of Fehr & Peers that interprets the General Plan significance criteria and associated significance thresholds for arterials, signalized intersections, and unsignalized intersections for project conditions and for cumulative conditions. The County has consistently and uniformly applied this methodology on discretionary projects for purposes of evaluating traffic impacts. Upon submittal of Applicant's Use Permit application in 2016, Staff selected the intersections to be evaluated in the Crane Transportation Group traffic study (CTG Traffic Study) based on potential areas of concern. The CTG Traffic Study incorporated the County's 10% or greater significance criteria limit for traffic added by a project on a stop sign-controlled intersection approach, as well as the 1% or greater traffic significance criteria for project traffic being added to arterial roadways.

The CTG Traffic Study found that the Level of Service for Ponti Road for the entire segment and at the intersection of Skellenger Road is LOS A. The CTG Traffic Study was reviewed by the County's Transportation Engineer and deemed acceptable given the assumptions made, methods used in the evaluation, and the conclusions reached. Per the Public Works Memorandum, dated March 14, 2018, Staff confirmed that the CTG Traffic Study adequately demonstrates that the proposed Winery in the proposed location will not result in significant impacts related to transportation as conditioned (COA No. 4.18(d)). See also Findings and Determinations as to the Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Grounds of Appeal incorporated here by reference.

Staff further identified in the Original MND that the transition to VMT was not required of lead agencies until July 1, 2020. However, in anticipation of the transition and per the County's recently adopted Circulation Element, Staff included new policies that reflected this new regulatory framework for transportation impact assessment, along with a draft threshold of significance that is based on reduction of VMT compared to the unmitigated project rather than the regional average VMT (General Plan Policies CIR-7 through CIR-9). In anticipation of implementation of County's VMT program, the Applicant is required to submit a Traffic Demand Management Plan that will identify winery measures to reduce peak-hour vehicle trips and annual reporting requirements upon the County's request (COA No. 4.20(b)).

The methodology relied on in the Original MND and Revised MND is reasonable, appropriate and supported by substantial evidence. Appellant's disagreement with the County's reasonable methodology does not equate to a significant impact.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fifth Ground of Appeal and upholds the Planning Commission's approval of the Project.

F. Sixth Ground of Appeal.

Appellant's Position: Appellant asserts that the MND's LOS analysis did not accurately reflect the nature of Ponti Road as a residential street. Appellant claims that calculations that simply show the increase in vehicular delay at nearby intersections fail to reflect the potential effects of the Project on residents' quality of life. Appellant contends that resident perceptions play an important role in this process, and those perceptions are dependent upon many variables, including ambient traffic levels, traffic speed, vehicle mix (such as number of trucks), and the general environment. Appellant's traffic consultant, Griffin Cove, relied on the Traffic Infusion on Residential Environments (TIRE) methodology and concluded the Project's increased traffic will be noticeable to area residents. Appellant contends that this is a significant impact that was unaddressed in the MND.

Findings and Decision: The Board finds and determines that:

Appellant's discontent with the County's reasonable methodology does not mean a significant impact on traffic would occur. While Staff may not have relied on the TIRE methodology, Staff did take into account the resident's quality of life or rural characteristics of the neighborhood. The Original MND acknowledged the neighborhood by describing that the surrounding area consists of existing vineyards and rural residential uses to the north, south, and west. Pina Cellars Winery is located directly across the proposed Project site off Silverado Trail. Out of seven residences, the Original MND identified the closest residence as approximately 560 feet to the north of the proposed Winery building along Ponti Road. The Original MND noted that Ponti Road has no posted speed limit and dead ends at the gated entrance to Beckstoffer Vineyards, which is approximately 0.54 miles from the intersection of Skellenger Lane. The proposed Winery would be located on the east side of Ponti Road and 1,230 feet from the intersection of Skellenger Lane.

In responding to Appellant's appeal, Staff's research revealed that TIRE index methodology is used by some communities for evaluating non-residential activities proposed in residential zones within urban areas. This methodology has never been used when evaluating Napa County projects given that the County is predominantly rural and agricultural uses such as vineyards and wineries are acceptable primary uses within the AP and AW Zoning Districts, in addition to residential uses pursuant to policies set forth in the Napa County General Plan.

As discussed above in Findings and Determination as to the First Ground of Appeal, incorporated here by reference, the CTG Traffic Study found with seasonal adjustments and scheduling of visitation or marketing activities, the proposed Project would result in an increase

of two inbound trips and one outbound trip during Friday PM peak hour (3:45 to 5:15) and one inbound trip and two outbound trips on Saturday PM peak hour (4:30 to 5:30). All two study intersections operate at unacceptable levels of service (LOS E or F) for both the Friday and Saturday PM peak hour under existing conditions, year 2020 conditions, and cumulative conditions (year 2030) both with and without the Project. These small increases in vehicle trips are similar to what would be generated from a single family residence, which is typical of at least 10 trips per day, and are not considered significant. The record reflects the agricultural residences found along Ponti Road and given the low traffic volumes, Project traffic impacts were appropriately found to be less than significant.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Sixth Ground of Appeal and upholds the Planning Commission's approval of the Project.

G. Seventh Ground of Appeal.

Appellant's Position: Appellant claims that Ponti Road is too narrow to support evacuating vehicles (including shuttle buses) and emergency response vehicles and is a dead-end roadway that is the sole access for seven residences. Given that Ponti Road is of substandard width, the MND should have analyzed whether it could safely accommodate traffic during an emergency, such as during a fire.

Findings and Decision: The Board finds and determines that:

Ponti Road and emergency access/egress was evaluated by the Napa County Fire Department. Although Ponti Road is narrow, it is a flat road, with clear line of sight for the entire approximately 0.54 mile length with 20' (privately owned) shoulders that can accommodate traffic during an emergency. The Project was routed to the Napa County Fire Department, the subject matter experts on life safety and fire issues, for review prior to Planning Commission consideration of the Project. The Fire Department's review included conducting a site visit on January 14, 2020. The Napa County Fire Department determined that because it is a flat paved road, with an average 15' width, as well as direct line of sight along the entirety of Ponti Road, it is adequate for Fire Department vehicles. The road also has privately owned shoulders throughout in excess of 20', which can be utilized by egressing vehicles in an emergency.

To further enhance the safety of Ponti Road, Applicant offered to construct two turn-out areas on the east side of Ponti Road, coinciding with adjacent property owned by Applicant. These turnouts would be hard-pack earth with gravel, subject to County Fire requirements for turnouts. Applicant's offer was accepted by the Commission and reflected in COA No. 6.15(c). Given the short segment of the road and the excellent sight distance in either direction, the Applicant's Engineer also opined that these two turnouts should provide more than adequate area

for large vehicles to pass on the paved road. County's Engineering Manager Ryan informed the Commission that the Applicant would work with the Napa County Fire Marshal's Office and the Engineering Division in the placement and siting of these turnouts for the most appropriate uses. (Certified Planning Commission Hearing Transcript January 15, 2020, page 53: 4-8).

The Winery's weekday visitation at 15 per day equates to approximately 12 daily trips on weekdays (at 2.6 visitors per vehicle times two one way trips) and 11 daily trips on weekend days (at 2.8 per vehicle times two one way trips on the weekend), which is comparable to a single-family residence that generates 10 trips per day. In addition, the largest of the three marketing events (200 guests) equates to approximately 143 trips at 2.8 visitors per vehicle times two one-way trips (which will be significantly reduced with the required shuttle service). There is no substantial evidence in the record that these low levels of marketing and visitation to the Winery would obstruct fire equipment and evacuation access during emergencies.

See also Findings and Determinations to the First, Second, Third, Fourth and Fifth Grounds of Appeal incorporated here by reference.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Seventh Ground of Appeal and upholds the Planning Commission's approval of the Project.

H. Eighth Ground of Appeal.

Appellant's Position: Appellant asserts that although the County indicates that parking would not be allowed on Ponti Road, it fails to provide any indication as to how this alleged prohibition would be enforced.

Findings and Decision: The Board finds and determines that:

Parking enforcement is achieved through the Napa County Sheriff's Department as complaints are called in and/or through officers driving by and seeing parking violations firsthand.

To protect agricultural lands for agricultural use, the County balances parking in a manner that will meet a project's anticipated demand but avoid creating excess parking (See Section XVII (f) of the Revised MND). Based upon the Winery's proposed business plan, visitation and employment levels, 13 on-site parking spaces would be provided. Parking for the larger marketing events will be off-site with shuttle service to the Winery. No parking is permitted or proposed within the right-of-way of Ponti Road.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion. Therefore, the Board denies the Eighth Ground of Appeal and upholds the Planning Commission's approval of the Project.

I. Ninth Ground of Appeal.

Appellant's Position: Appellant asserts that the County failed to address traffic impacts on Skellenger Lane. A Commissioner requested an assessment of Skellenger Lane noting that the roadway serves as a short-cut between Silverado Trail and Highway 29 via Conn Creek Road. There is no stop sign for traffic on Skellenger at the intersection of Ponti Road. Because of high speeds (55 mph plus) on Skellenger Lane, combined with its lack of shoulders or turn lane, Appellant contends that turning in and out of Ponti Road is extraordinarily dangerous. Appellant claims that Commissioner Cottrell's requested analysis was not conducted.

Findings and Decision: The Board finds and determines as follows:

Commissioner Cottrell's questions were addressed by CTG in its memorandum dated January 9, 2020. CTG's Mark Crane, PE confirmed that traffic distribution for the Project was based upon current traffic levels such that the vast majority of peak traffic hours on Friday and Saturday afternoon would be expected to turn right from Skellenger Lane and go southbound on Silverado Trail. Crane further stated that it was not realistic for exiting Project traffic to turn left onto Silverado Trail. Therefore, no stop sign was warranted at Skellenger Lane and Ponti Road nor would a left turn lane be warranted at the intersection of Silverado Trail. Staff concurred with CTG's analysis that no improvements were required, since the intersection of Skellenger Lane and Ponti Road did not exceed established traffic thresholds.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Ninth Ground of Appeal and upholds the Planning Commission's approval of the Project.

J. Tenth Ground of Appeal.

Appellant's Position: Appellant asserts moving Winery access to Silverado Trail would avoid impacts to both Skellenger Lane and Ponti Road, a substantial benefit that was not analyzed by the County.

Findings and Decision: The Board finds and determines as follows:

The record indicates that the Commission thoroughly and thoughtfully considered the feasibility of relocating the Winery's access to Silverado Trail. The Planning Commission record includes a letter from Applicant's engineer, Bartelt Engineering, dated November 20, 2019, documenting the reasons that relocating the proposed Winery access from Ponti Road to Silverado Trail is not feasible (the Bartelt Engineering Letter) and testimony from Public Works Director Lederer regarding County General Plan policies discouraging new driveways on major arterials like Silverado Trail.

According to the Bartelt Engineering Letter, relocation of the access driveway to a point along Silverado Trail would necessitate installation of a left turn lane on Silverado Trail and widening of Silverado Trail to accommodate the left turn lane. The Applicant's infeasibility analysis also identifies steep slopes, limited right-of-way availability, removal of mature Eucalyptus trees, the relocation of one joint utility pole and one guy pole, the extension and/or relocation of two 36-inch storm drain culverts flowing under Silverado Trail, the construction of roadway embankments ranging from 4 feet to 8 feet in height, relocation of approximately 700 lineal feet of overhead electrical and telephone lines, construction of a 600± lineal foot driveway from Silverado Trail to the relocated winery due to the setback requirements from Silverado Trail, and the removal of approximately three (3) acres of existing vineyard in support of infeasibility. Applicant informed the Commission that this alternative would require completely redesigning the Winery, drafting new technical reports, and filing a new application, all of which would be of considerable expense.

Relocating a proposed winery or access road is generally required only if necessary to avoid potentially significant environmental impacts or to achieve compliance with County regulations such as setbacks, slopes and viewshed or General Plan policies. Here, the proposed winery's access off Ponti Road has been designed in a manner that complies with County regulations and also avoids potential environmental impacts.

Staff also advised the Commission that both Caltrans and Napa County Public Works Department prefer to limit driveway connections along high speed high volume roadways, such as Silverado Trail or State Route 29, where there is an alternative access route to a property. The fewer driveway connections, the fewer potential locations for vehicle conflicts or disruptions to traffic flow. Public Works Director Lederer also opined that it would be preferable to direct all Scarlett Winery turn movements to/from Silverado Trail at the existing Skellenger Lane intersection. Public Works Director Lederer further informed the Commission that there are two General Plan Circulation Element policies that discourage the addition of new driveways on Silverado Trail and other major arterials in order to maintain a good flow of traffic on these roadways indicating that as more connections are introduced, the more impacted it may get. The Circulation Element policies are as follows: Policy CIR-1 and Policy CIR-40, formerly identified as Policy CIR-11 and CIR-15 under the 2008 Circulation Element, which is reflective of the Board of Supervisors' policy (Certified Planning Commission Hearing Transcript January 15, 2020, page 41:12-28).

The Commission's deliberations reflect that the Commission thoughtfully considered and analyzed the feasibility of relocating the Winery's access. (Certified Planning Commission Hearing Transcript January 15, 2020, pages 40:9-28; 41-51:1-5). During deliberations Commissioner Hansen commented, "I am not inclined to compel an applicant to completely change an entire project ... especially when there are suitable alternatives, and the County and Caltrans both have said that they want to limit driveway connections along high volume roadways like Silverado Trail" (Certified Planning Commission Hearing Transcript January 15, 2020, page 46:24-28). Similar comments were expressed by Commissioners Mazotti, Gallagher and Chair Whitmer.

For these reasons, a majority of the Commission and a majority of the Board were unable to find any justification (technical, regulatory or environmental) to warrant redesign of the Project to relocate the proposed winery access from Ponti Road to Silverado Trail.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Tenth Ground of Appeal and upholds the Planning Commission's approval of the Project.

K. Eleventh Ground of Appeal.

Appellant's Position: Appellant contends that 13 parking spaces, five of which would be used for employee parking, is significantly less than would be needed during large events. Appellant further asserts although the Project calls for the use of shuttle service for the Project's large events (100-200 people), there is no assurance that visitors will not try to access the Winery by car resulting in excessive congestion on Ponti Road. Appellant contends that the MND failed to evaluate these impacts.

Findings and Decision: The Board finds and determines that:

Appellant's speculation regarding the Applicant's future compliance is unfounded and is not required to be analyzed in the MND. (See *Joshua Tree Downtown Bus. Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677 at 690; *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 CA3d 1337 (opponents' subjective concerns and unsubstantiated opinions about dangerous traffic conditions are not substantial evidence); *Perley v. Board of Supervisors* (1982) 137 CA3d 424 (neighbors' unsubstantiated fears and concerns about project's impacts lacked objective basis for challenge and did not constitute substantial evidence).

The Applicant represented to the Commission that shuttle service would be used for all "large" events and the Project has been conditioned accordingly (COA Nos. 4.3(b), (c) and (d)).

The 13 parking spaces (five for use by employees and eight for use by daily visitors) is commensurate with the proposed number of employees and visitation. Daily winery hours of

operation are 6 am to 6 pm and visitation hours are 10 am to 6 pm. During regular visitation hours, not all 15 daily visitors would be arriving at the same time. Visitation programs are generally staggered based upon the desired wine experience envisioned in the winery business plan. The proposed parking will meet the anticipated parking demand, prevent excess unused parking and will not result in excessive congestion on Ponti Road. Furthermore, the Applicant is required to submit a Traffic Demand Management Plan for review and approval by the Planning Division and the Public Works Department, which includes but is not limited to the following measures that will reduce peak-hour vehicle trips such as encouraging guests to carpool or use a shuttle or van measures, promoting employee carpooling, implementing Guaranteed Ride Home (GHR) program, and providing lunch on-site. Such plan would be implemented upon County issuance of a Final Certificate of Occupancy for the Winery, and will be subject to submittal of annual reporting requirements at the County's request in response (COA No. 4.20 (b)).

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Eleventh Ground of Appeal and upholds the Planning Commission's approval of the Project.

L. Twelfth Ground of Appeal.

Appellant's Position: Appellant asserts that the County did not establish proper thresholds of significance for determining whether noise from the Project would be significant. The County relied on a noise standard of 50 decibels and did not acknowledge that the County Code allows the noise limits to be reduced by 5 dB for noise characterized as "offensive," so long as the resulting noise limit is not below 45 dBA (NCC Section 8.16.070.B). On that basis, Appellant contends the relevant limit becomes 45 dBA. The Code identifies offensive noise as that which contains a steady, audible tone such as a whine, screech or hum, or is a repetitive noise such as hammering or riveting, or contains music or speech. NCC Section 8.16.070. Noise from the Project's construction, production, and marketing events clearly has the potential to exceed 45 dBA.

Findings and Decision: The Board finds and determines that:

Appellant is incorrect. The County relied on appropriate noise thresholds, appropriately evaluated noise from both project construction and operations, and correctly found that noise from winery operations and production would not exceed even the 45 dBA suggested by Appellant.

A) Background

Because of the small marketing and visitation program and closest residence located approximately 560 feet from the Winery from the north, Staff reasonably extrapolated the Bell Winery noise assessment calculations prepared by RGD Acoustics and dated November 16, 2015 to assess potential noise impacts for the Scarlett Winery. Use of the Bell Winery calculations was

appropriate for this Project given similar characteristics of the Scarlett Winery to the Bell Winery (e.g., winery size, outdoor visitation and marketing events, hours of operation, location on the valley floor, and proximity to nearby residences).

For the Bell Winery, a noise meter measurement device was placed 123 feet from the sound source (a marketing event). Given that the largest marketing event proposed at the Scarlett Winery was larger, the noise level measured at the Bell Winery was adjusted upward. Furthermore, since the nearest residence from Scarlett Winery is 560 feet to the southwest of the winery patio, noise measurement levels were also adjusted accordingly. Thus, using the Bell Winery study as a model, and applying a six-decibel reduction per doubling of distance from the noise source, for Scarlett Winery, it was anticipated that exterior noise experienced at the nearest residence 560 feet to the southwest of the winery patio (estimated 49 decibels for half of the event duration) would not exceed the County Code standard of 50 decibels during 50 percent of daytime hours. With regards to noise associated with the production building (predominately-bottling activities), the proposed orientation and layout of this building would muffle noise and direct any noise toward Silverado Trail and not to the northwest.

To further address any perceived potential noise impacts by the neighbors, the Applicant removed its prior request for on-site wine consumption activities from the West Terrace, which is the closest visitor-serving area of the Project to Ponti Road (300 feet away per the WDO setback), the closest residence (R1, Green) at 600 feet, and the Montgomery (R5) residential access on Ponti Road. The Planning Commission further restricted use of the West Terrace to only daily visitation when it approved the Project.

Prior to the appeal hearing, the former Chair found good cause existed to allow Appellant to augment the record with the Papadimos Report and to allow the parties to submit additional evidence regarding potential noise impacts. Staff retained noise consultant Illingworth & Rodkin to review the conclusions in the Original MND and to provide site-specific noise calculations.

Illingworth & Rodkin measured long-term noise along the north boundary of the project site, where the winery and hospitality/administration buildings are proposed, and measured short-term noise in the vicinity of the residential properties south of the project site and on Skellenger Lane south of Ponti Road. Illingworth & Rodkin then calculated noise levels from project activities at six residential sites located on Ponti Road. The Appellant's residence was measured to be 900 feet away from the Winery (R-5).

The results of the site-specific I&R Noise Assessment amplified and reaffirmed the conclusions of the Original MND that noise impacts would be less than significant.

B) The County relied on appropriate noise thresholds.

Both the Napa County General Plan and the County's Noise Ordinance were used to identify appropriate noise thresholds for the Project. The noise levels are conservative given the rural setting, consistent with thresholds used by many other communities and appropriate for the impact of the proposed Winery.

Appellant unreasonably suggests that any detectable increase in noise levels above the quietest ambient conditions would represent a significant increase in noise. Contrary to the assertions in the Papadimos Peer Review, the County Jail Project EIR relied on the quantitative noise limits in the County General Plan and County's Noise Ordinance (Chapter 8.16) as did Scarlett Winery's assessment.

C) The County appropriately found noise from Project construction would not exceed 75 dBA.

Noise from construction activity in all cases were predicted assuming unshielded conditions and propagated to the nearest receptors using a standard rate of attenuation with the distance from the noise source.

The Original MND acknowledges that the Project would result in a temporary increase in noise levels during construction of the winery and its infrastructure. Construction activities would be limited to daylight hours using properly muffled vehicles. Staff further identified that the nearest residence to the winery development area is approximately 560 feet to the northwest of the proposed winery structures and that there is a low potential for impacts related to construction noise to result in a significant impact on the residence. As conditioned (COA No. 7.3), construction activities would be limited to 7a.m.-7p.m. on weekdays, during normal hours of human activity, vehicles would be muffled, and backup alarms adjusted to the lowest allowable levels. All construction activities would be required to comply with the Napa County Noise Ordinance (Napa County Code Chapter 8.16). The Original MND appropriately concluded that temporary construction noise generated would not be significant.

The I&R Noise Assessment amplified the prior conclusions in the Original MND and reaffirmed that the Project would not result in a substantial temporary increase in noise levels during construction of the Winery and its infrastructure. In addition, the Project would not generate excessive ground borne vibration because "Construction would occur more than 500 feet from the nearest residences and pile driving is not proposed as a method of construction. At a distance of 500 feet, ground borne vibration from construction is anticipated to generate [less than significant vibration levels]" and "such low levels of vibration would not be perceptible by persons at rest..."

D) The County appropriately found noise from winery operations and production would not exceed 45 dBA for daytime and 50 dBA for nighttime would result in less than significant impacts.

Noise from winery operations is generally limited and intermittent, meaning the sound level can vary during the day and over the course of the year, depending on the activities at the winery. The primary noise-generating activities are equipment associated with wineries including refrigeration equipment, bottling equipment, barrel washing, de-stemmers and press activities occurring during the harvest crush season, delivery trucks, and other vehicles. The Napa County General Plan EIR indicates the average, or equivalent, sound level (Leq) for winery activities is 51dBA in the morning and 41dBA in the afternoon. Audibility of a new noise source and/or increase in noise levels within recognized acceptable limits are not usually considered to

be significant noise impacts, but the General Plan notes that these concerns should be addressed and considered in the planning and environmental review processes. Winery operations would occur between 6:00 a.m. and 6:00 p.m. (excluding harvest). Staff determined that the proposed orientation and layout of this production building, as well as project landscaping, would muffle winery operational noise and direct such noise out toward Silverado Trail and not to the north.

Again, the I&R Noise Assessment reaffirmed the conclusions in the Original MND and found operational features of the proposed Winery would not generate significant noise impacts as follows:

- Mechanical Equipment: Because the mechanical equipment would be located a minimum of 560 feet from the nearest residential outdoor use areas, the sound pressure level resulting from full-load operation is calculated to be 39 dBA L50 or less, which would not exceed the 50 dBA L50 daytime noise limit or 45 dBA L50 nighttime noise limit established by Napa County.
 - Maintenance and Forklift Operations: Since maintenance and forklift operations would be located a minimum of 560 feet from the nearest residential outdoor use areas (R1), the sound pressure level resulting from these activities is calculated to be 46 dBA L25 or less, which would not exceed the 55 dBA L25 daytime noise limit. Other receptors (R2-R6) would be located further away and therefore, exposed to lower levels of noise. The Appellant's residence (R-5) is located 900 feet from the Winery.
 - Seasonal Crush Activities: Crush activities typically occur for a period of about six to eight weeks per year; however, such activities would not occur on a daily basis during this timeframe and are expected to primarily occur within the winery building and at the covered outdoor work area. Such activities would occur approximately 650 feet from the closest portion of the residential outdoor use area of R1, and other receptors in the project vicinity (R2-R6) would be further from the bottling truck and partially or fully shielded by the intervening winery building. At the closest residential outdoor use area, crush noise levels are calculated to be 42 dBA L50 or less, and would not exceed the 50 dBA L50 daytime noise limit or 45 dBA L50 nighttime noise limit.
 - Bottling Activities: Bottling would occur over a period of a few weeks per year during the daytime. The analysis conservatively assumes that bottling will be done with a mobile bottling truck at the covered outdoor work area approximately 650 feet from the closest portion of the residential outdoor use area of R1. At the closest residential outdoor use area, bottling noise levels are calculated to be 45 dBA L50 or less, and would not exceed the 50 dBA L50 noise limit. Other receptors in the project vicinity (R2-R6) would be further from the bottling truck and partially or fully shielded by the intervening winery building.
- E) The County appropriately found noise from marketing and visitation would result in less than significant impacts.

The Original MND concluded that because marketing events would be held inside the hospitality building with some use on the West Terrace Deck, surrounding residences would not be significantly impacted. The Planning Commission restricted the larger proposed marketing events to weekends only and prohibited use of the West Terrace Deck and outdoor picnic area for marketing events. Daily tours and tastings are limited to the tasting areas inside the hospitality building, the East Outdoor Terrace area and on the West Terrace Deck.

The I&R Noise Assessment concluded that the acoustic center of the noise produced by marketing events in the picnic area would be approximately 600 feet from the residential area of R1, 680 feet from the residential area of R6, and 800 feet from the residential area of Appellant's residence, R5. The predicted noise level from marketing events would be 45 dBA L50 at the residential area of R1, 43 dBA L50 at the residential area of R6, and 44 dBA L50 at the residential area of R5. Noise levels would be less if the events were held at the west terrace, east terrace, or indoors. The predicted noise levels at R1, R5, and R6 would not exceed the daytime noise level threshold of 45 dBA L50 (corrected for the character of sound). Other receptors in the project vicinity (R2, R3, and R4) would be further from the event noise source and subsequently exposed to lower levels of noise.

The I&R Noise Assessment also evaluated potential impacts associated with traffic and parking generated by the Winery and visitation/marketing events at nearby receptors and concluded that noise levels would be less than significant.

Traffic noise levels occurring during the PM peak period on a Saturday during crush or during a marketing event would fall within the low end of the range of existing ambient noise levels in the area, which typically ranged from 37 to 52 dBA Leq (as measured at LT-1), and from 42 to 43 dBA Leq (as measured at ST-1 and ST-2).

Regarding parking lot noise, the I&R Noise Assessment found "Parking lot noise levels would be produced by vehicle circulation, engine starts, and door slams, which typically produce noise levels that range from 53 dBA to 63 dBA Lmax at 50 feet. Such noise levels would be about 20 dBA less at a distance of 500 feet, which represents the minimum separation distance from the small parking to the nearest residential property to the north. Maximum instantaneous noise levels due to on-site parking activities would range from 33 to 50 dBA Lmax at the nearest residence north of the parking lot and would be well below the daytime maximum instantaneous noise limit of 70 dBA Lmax and typical ambient maximum instantaneous noise levels in the area. Parking lot noise levels would be less at other receptors in the project vicinity due to increased distance from the noise source."

After reviewing I&R's Noise Assessment, Appellant submitted a peer review report prepared by Papadimos Group dated June 8, 2021 (Papadimos Peer Review). The Papadimos Peer Review asserts that the I&R Noise Assessment fell short of accurately measuring ambient conditions or quantifying how various activities associated with the proposed Project would affect existing ambient conditions for nearby residential uses. The Papadimos Report also asserts that the I&R Noise Assessment failed to identify thresholds of significance in consideration of existing ambient conditions, and therefore, recommended that the County use a 3dB increase as its criterion of significance and that the noise assessment be revised and recirculated.

On July 1, 2021, Illingworth & Rodkin, Inc. responded to the deficiencies asserted by the Papadimos Peer Review, confirmed the County's noise standards were appropriately used to establish the thresholds of significance for the Project and explained that the Papadimos Peer Review's suggested threshold (limiting noise increases to above existing ambient noise levels at nearby residences of at most a 3dB increase) was meritless and unfounded as it was arbitrarily selected in order to present arguments that significant noise impacts could occur.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Twelfth Ground of Appeal and upholds the Planning Commission's approval of the Project.

M. Thirteenth Ground of Appeal.

Appellant's Position: Appellant asserts that the County's reliance on a prior noise analysis for another winery (e.g., the Bell Winery) as a "model" for the Project's noise impacts, in lieu of actually analyzing how noise from the Project would impact nearby neighbors violates CEQA.

Findings and Decision: The Board finds and determines that the I&R Noise Assessment amplified the conclusions of the Original MND and reaffirmed the County's prior assessment based on the Bell Winery model that production and hospitality activities would not result in significant noise impacts. See also Findings and Determination as to the Twelfth Ground of Appeal incorporated here by reference.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Thirteenth Ground of Appeal and upholds the Planning Commission's approval of the Project.

N. Fourteenth Ground of Appeal.

Appellant's Position: Appellant asserts that the County failed to provide any factual documentation to support its assertion that impacts would be less than significant and simply asserted that the orientation and layout of the production building would muffle noise directing any noise out toward Silverado Trail. Appellant further asserts that crush activities, deliveries, and bottling activities would take place within the production building and the closest residence, just 560 feet to the north of this building, and that that noise from production activities, which

would occur as early as 6:00 a.m. across the street from a residence would result in a significant noise impact.

Findings and Decision: The Board finds and determines that the record contains ample evidence supporting the County's determination that noise impacts would not be significant. The Winery has been designed in a scale and scope that is consistent with other wineries in the Valley that blend in with its surroundings. The Winery is made up of two buildings with the hospitality building set back 300 feet from Ponti Road and 123 feet from the northwest property line. The production building is set back 70 feet from the northwest property line and approximately 560 feet from the nearest residence (R-1 – Green residence) separated by a 20-24' wide driveway access, a landscaped area and a proposed two Bioretention Detention Basins. As designed, the hospitality building will be set further away and placed in front of the production building. The residence would also face the north side of the proposed production building where employee parking would occur behind this building and crush activities, deliveries, and bottling activities would take place within the enclosed 3,445 sf crush area/covered work area and a smaller covered outdoor work area approximately 1,280 sf in size near the center of the building directly across from the employee parking area all facing out toward Silverado Trail. As with other winery projects, a site-specific noise assessment is usually only required if a winery is proposed within 300 feet of an off-site residence. Given the building's design and distance from the closest residence, the Original MND appropriately found noise impacts would be less than significant. The I&R Noise Assessment and response to the Papadimos Group comment letter amplified the Revised MND's prior conclusions.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fourteenth Ground of Appeal and upholds the Planning Commission's approval of the Project.

O. Fifteenth Ground of Appeal.

Appellant's Position: Appellant asserts that the County should have conducted a groundwater recharge analysis to identify and evaluate the Project's potential to impact groundwater resources. Appellant asserts that the fact that groundwater levels may have recovered over the last few years does not erase the fact that the area has historically been in a long-term state of decline. In the absence of an actual groundwater recharge analysis, Appellant asserts that the County lacks the evidentiary support that the Project would not adversely impact groundwater recharge and storage.

Findings and Decision: The Board finds and determines that contrary to the Appellant's assertion, a full and thorough assessment of groundwater issues was performed by Applicant's engineer Bartelt Engineering and then peer reviewed by the County's groundwater consultant Luhdorff & Scalmanini Consulting Engineers (LSCE). LSCE's peer review confirmed that based on the most current available information in the vicinity of the proposed Scarlett Winery,

including data not cited by commenters nor Appellant's expert Kamman, the data reflects long-term stable groundwater levels in a well (Napa County-132) located in the Project vicinity and that has been monitored by the County for over five decades. Therefore, additional analysis was not warranted. To ensure the Project remained compliant with the proposed groundwater usage estimates identified in the Water Availability Analysis prepared for the Project, a project specific condition of approval restricts all water consuming activities to 29.40 AF/YR and requires the submittal of groundwater monitoring reports on a regular basis. (COA Nos. 4.20(a), 6.15(b) and 9.9(a)).

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Fifteenth Ground of Appeal and upholds the Planning Commission's approval of the Project.

P. Sixteenth Ground of Appeal.

Appellant's Position: Appellant claims that the County must require an EIR to analyze the extent and severity of the Project's significant environmental impacts and to consider feasible alternatives to avoid or minimize these impacts. Appellant contends that alternatives exist-both to the location of the Winery on the Project site and access to the Winery that would ensure that existing residents are not subjected to increased traffic and noise impacts. According to Appellant, two civil engineers unequivocally determined that access from Silverado Trail is feasible. It is clear that the only reason the Applicant is refusing to provide access from Silverado Trail is to avoid an increase in cost.

Findings and Decision: The Board finds and determines that:

The County has appropriately and adequately analyzed the potential environmental effects resulting from this small 30,000 gallons per year winery with a maximum of 15 visitors per day and a modest marketing program, proposed on a 47.88 acre-site with 38-acres of existing vineyard and determined no potentially significant environmental impacts would result from the Project. There is nothing about the Winery or its operations that reasonably triggers the need for an EIR to evaluate the "extent and severity" of the impacts or the need to analyze project alternatives.

CEQA requires that when a project would result in significant environmental impacts, project alternatives that will reduce or avoid potentially significant environmental impacts must be considered and evaluated in the environmental impact report (EIR) prepared for the project (CEQA Guidelines Section 15126.6). Outside of an EIR, project alternatives are not required to

be considered in Negative or Mitigated Negative Declarations (CEQA Guidelines Section 15063 (d)).

As Staff explained to the Commission, relocating a proposed winery or access roads is generally required only if necessary to avoid potentially significant environmental impacts or to achieve compliance with County regulations such as setbacks, slopes and viewshed. Here, the Winery and its access has been designed in a manner that complies with County requirements and avoids potential environmental impacts. Applicant's engineer also documented the reasons that relocating the proposed Winery access from Ponti Road to Silverado Trail is not feasible. See also Findings and Determinations as to the Tenth Ground of Appeal incorporated here by reference.

Neither a majority of the Planning Commission nor a majority of the Board of Supervisors could find any reasonable justification (technical, regulatory or environmental) to require redesign of the Project to relocate access from Ponti Road to Silverado Trail.

Conclusions:

For the foregoing reasons, the Board finds that substantial evidence exists in the record to support the Planning Commission's decision and, considering the record as a whole, that there is no substantial evidence to support a contrary conclusion or a fair argument that the Project will have a significant effect on the environment. Therefore, the Board denies the Sixteenth Ground of Appeal and upholds the Planning Commission's approval of the Project.

Other Grounds Raised by Appellant:

Appellant's Appeal also incorporates by reference the various inadequacies and CEQA violations that were raised before the Planning Commission in Appellant's letters dated October 1, 2019 (Refer to Attachment O of the Planning Commission Staff Report of October 2, 2019) and January 6, 2020 (Refer to Attachment G of Planning Commission Staff Report of January 6, 2020). Staff prepared detailed responses to Appellant's concerns in the Staff Reports provided to and considered by the Commission and the Board hereby incorporates them by reference. (Refer to Attachments C, D, E, & L of Planning Commission Staff Report of January 6, 2020)

Section 4. CEQA Determinations.

A. Recirculation of Revised MND is not Required. The Original MND was revised to incorporate the I&R Noise Assessment results and to further support the County's conclusion that noise impacts resulting from the Winery would be less than significant. No new impacts associated with the I&R Noise Assessment have been identified. The I&R Noise Assessment merely amplifies and clarifies the previous determinations in the Original MND that the Winery would not generate significant noise impacts. As of July 1, 2020, lead agencies are required to consider Vehicle Miles Travel (VMT) as part of the CEQA analysis. The Transportation Section of the Revised MND reflects the County's VMT program. The Hydrology section of the Revised MND reflects the recent drought declarations made by the State and County. Since these revisions to the Initial Study clarify and amplify the existing analysis and conclusions and do not

result in new or more significant impacts, the Revised MND is not required to be recirculated (CEQA Guidelines Section 15073.5 (c)); and

B. Adoption of Revised MND. The Board makes the following findings with respect to the Revised MND:

1) The Board of Supervisors has read and considered the Revised Mitigated Negative Declaration prior to taking action on said Revised Mitigated Negative Declaration and the proposed Project.

2) The Revised Mitigated Negative Declaration is based on independent judgment exercised by the Board of Supervisors.

3) The Revised Mitigated Negative Declaration was prepared and considered in accordance with the requirements of the California Environmental Quality Act (CEQA).

4) There is no substantial evidence in the record as a whole that the Project as mitigated will have a significant effect on the environment.

5) There is no evidence in the record as a whole that the proposed Project will have a potential adverse effect on wildlife resources or habitat upon which the wildlife depends.

6) The site of this proposed Project is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5 and is not within the boundaries of any airport land use plan.

Section 5. Substantial Evidence.

Substantial evidence supporting each and every finding made herein is contained in the record of proceedings. All of the files and records that comprise the administrative record for the Project are incorporated herein by reference.

Section 6. Summary of Decision.

Based on the foregoing facts, findings, and determinations, the Board of Supervisors hereby:

- A. Denies the Appeal in its entirety;
- B. Adopts the Revised MND and Mitigation Monitoring and Reporting Program prepared for the Project;
- C. Upholds the Planning Commission's findings regarding Use Permit No. P16-00428-UP; and
- D. Approves Use Permit No. P16-00428-UP subject to the Revised Conditions of Approval attached as Exhibit "A."

Section 7. Effective Date.

This resolution shall take effect in accordance with the provisions of Napa County Code Section 2.88.090.

Section 8. Judicial Challenge.

Unless a shorter period applies, any judicial challenge to this decision is governed by California Code of Civil Procedure Section 1094.6.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Board of Supervisors of the County of Napa, State of California, at a regular meeting of said Board held on the 19th day of October, 2021, by the following vote:

AYES: SUPERVISORS _____
NOES: SUPERVISORS _____
ABSENT: SUPERVISORS _____
ABSTAIN: SUPERVISORS _____

NAPA COUNTY, a political subdivision of
the State of California

ALFREDO PEDROZA, Chair of the
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>Laura J. Anderson (e-sign)</u> Deputy County Counsel Date: <u>October 5, 2021</u>	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: _____ _____
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Attachment:

- Exhibit "A" – Revised COA

BOARD OF SUPERVISORS – OCTOBER 19, 2021
REVISED FINAL CONDITIONS OF APPROVAL

SCARLETT WINERY
USE PERMIT P16-0428-UP
1052 PONTI ROAD, ST. HELENA
ASSESSOR PARCEL NO. 030-280-010

This permit encompasses and shall be limited to the project commonly known as **Scarlett Winery**, located at 1052 Ponti Road. Part I encompasses the Project Scope and general conditions pertaining to statutory and local code references, project monitoring, and the process for any future changes or activities. Part II encompasses the ongoing conditions relevant to the operation of the project. Part III encompasses the conditions relevant to construction and the prerequisites for a Final Certificate of Occupancy. It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved.

Where conditions are not applicable or relevant to this project, they shall be noted as “Reserved” and therefore have been removed.

When modifying a legally established entitlement related to this project, these conditions are not intended to be retroactive or to have any effect on existing vested rights except where specifically indicated.

PART I

1.0 PROJECT SCOPE

The permit encompasses and shall be limited to:

- 1.1 Approval of a Use Permit for a new 30,000-gallon per year winery to allow the following
 - a. Construction of a winery building consisting of two detached structures (a two story 4,514 sf hospitality/administration building and a one story 18,022 sf production building) separated between the east outdoor terrace area and a landscaped area;
 - b. Construction of a 4,725 sf covered outdoor crush pad – Crush will occur inside the winery production building;
 - c. Visitation, tours and tastings, and a marketing plan as set forth in Conditions of Approval (COAs) Nos. 4.1 through 4.3 below;
 - d. On-premise consumption of wines as set forth in Condition of Approval No. 4.4 below;
 - e. Six (6) full-time, two (2) part-time employees and two (2) employees during harvest for vineyard activities only;
 - f. A commercial kitchen for some food preparation and use as a caterers’ staging area for some of the marketing events;

- g. Winery hours of operation daily 6:00 am – 6:00 pm (Non-harvest production hours) and daily visitation hours of operation daily 10:00 am – 6:00 pm;
- h. Construction of seven (7) visitor and five (5) employee parking spaces both with a handicapped space and one area for a high occupancy vehicle for a total of 13 spaces;
- i. Installation of a wastewater system;
- j. Installation of a regulated transient non-community water system;
- k. Installation of two (2) 20,000-gallon domestic water storage tanks and one (1) 100,000-gallon fire water storage tank;
- l. Installation of an entry gate and winery sign; and
- m. All project spoils to be disposed on-site.

The winery shall be designed in substantial conformance with the submitted site plan, elevation drawings, and other submittal materials and shall comply with all requirements of the Napa County Code (the County Code). It is the responsibility of the permittee to communicate the requirements of these conditions and mitigations (if any) to all designers, contractors, employees, and guests of the winery to ensure compliance is achieved. Any expansion or change in winery use or alternative locations for fire suppression or other types of water tanks shall be approved in accordance with the County Code and may be subject to the permit modification process.

2.0 STATUTORY AND CODE SECTION REFERENCES

All references to statutes and code sections shall refer to their successor as those sections or statutes may be subsequently amended from time to time.

3.0 MONITORING COSTS

All staff costs associated with monitoring compliance with these conditions, previous permit conditions, and project revisions shall be borne by the permittee and/or property owner. Costs associated with conditions of approval and mitigation measures that require monitoring, including investigation of complaints, other than those costs related to investigation of complaints of non-compliance that are determined to be unfounded, shall be charged to the property owner or permittee. Costs shall be as established by resolution of the Board of Supervisors in accordance with the hourly consulting rate established at the time of the monitoring and shall include maintenance of a \$500 deposit for construction compliance monitoring that shall be retained until issuance of a Final Certificate of Occupancy. Violations of conditions of approval or mitigation measures caused by the permittee's contractors, employees, and/or guests are the responsibility of the permittee.

The Planning Commission may implement an audit program if compliance deficiencies are noted. If evidence of a compliance deficiency is found to exist by the Planning Commission at some time in the future, the Planning Commission may institute the program at the applicant's expense (including requiring a deposit of funds in an amount determined by the Commission) as needed until compliance assurance is achieved. The Planning Commission may also use the data, if so warranted, to commence revocation proceedings in accordance with the County Code.

PART II

4.0 OPERATIONAL CHARACTERISTICS OF THE PROJECT

Permittee shall comply with the following during operation of the winery:

4.1 GENERAL PROVISIONS

Consistent with the County Code, tours and tastings and marketing may occur at a winery only where such activities are accessory and “clearly incidental, related, and subordinate to the primary operation of the winery as a production facility.”

Tours and tastings (defined below) may include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant.

Retail sales of wine shall be permitted as set forth in the County Code.

4.2 TOURS AND TASTINGS/VISITATION

Tours and tastings shall be by appointment only and shall be limited to the following:

- a. Frequency: 7 days per week, Monday through Sunday
- b. Maximum number of persons per day: 15
- c. Maximum number of persons per week: 80
- d. Hours of visitation: 10 a.m. to 6 p.m.
- e. Food and Wine Parings; Food prepared in the on-site commercial kitchen or catered.
- f. Daily tours and tastings may be conducted on the West Terrace Deck.
[Added by the Planning Commission]
- f.g. No daily tours and tastings shall occur in the landscaped areas (as redesignated by COA No. 6.15(d) below) located to the north of the hospitality building. [Added by the BOS for clarification purposes]

“Tours and tastings” means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointments for tours or tastings. To the maximum extent feasible, scheduling of visitors shall not occur during peak travel times (Weekdays and Weekends between 3:00 p.m. - 5:30 p.m.).

A log book (or similar record) shall be maintained to document the number of visitors to the winery (for either tours and tastings or marketing events), and the dates of the visits. This record of visitors shall be made available to the Planning, Building and Environmental Services (PBES) Department upon request.

4.3 MARKETING

Marketing events shall be limited to the following:

- a. Event Type 1
 - 1. Frequency: Two (2) per month
 - 2. Maximum number of persons: 10
 - 3. Time of Day: 10 a.m. to 6 p.m. or 6 p.m. to 10 p.m.
- b. Event Type 2
 - 1. Frequency: One (1) per year
 - 2. Maximum number of persons: 100
 - 3. Time of Day: 10 a.m. to 6 p.m. and 6 p.m. to 10 p.m.
 - 4. Weekends only
 - 5. Portable toilet facilities for guest use shall be required.
 - 6. Shuttle service shall be used.
- c. Event Type 3
 - 1. Frequency: One (1) per year
 - 2. Maximum number of persons: 125
 - 3. Time of Day: 10 a.m. to 6 p.m. and 6 p.m. to 10 p.m.
 - 4. Weekends only.
 - 5. Portable toilet facilities for guest use shall be required.
 - 6. Shuttle service shall be used.
- d. Event Type 4
 - 1. Frequency: One (1) per year
 - 2. Maximum number of persons: 200
 - 3. Time of Day: 10 a.m. to 6 p.m. and 6 p.m. to 10 p.m.
 - 4. Weekends only.
 - 5. Up to 10 event staff may be used.
 - 6. Portable toilet facilities for guest use shall be required.
 - 7. Shuttle service shall be used.
- e. Food and Wine Pairings; Food prepared in the commercial kitchen or catered.
- f. Daily tours and tastings visitors will not occur on days when events are held with more than 100 guests in attendance.
- g. No marketing events shall ~~be conducted~~ occur on the West Terrace Deck, as designated on the Architectural Drawings Sheet UP A-2, dated January 31, 2018. Refer to COA 6.15 (d) below. [Added by the Planning Commission and revised by the Board of Supervisors]

"Marketing of wine" means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to the County Code. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental,

related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

Business events are similar to cultural and social events, in that they will only be considered as “marketing of wine” if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery’s Use Permit. To be considered directly related to the education and development of customers or potential customers of the winery, business events must be conducted at no charge except to the extent of cost recovery, and any business content unrelated to wine must be limited.

Careful consideration shall be given to the intent of the event, the proportion of the business event’s non-wine-related content, and the intensity of the overall marketing plan (County Code).

All marketing event activity, excluding quiet clean-up, shall cease by 10 p.m. If any [Type 1 event pursuant to COA No. 4.3 \(a\)](#) is held which will exceed the available on-site parking, the permittee shall prepare an event-specific parking plan which may include, but not be limited to, valet service or off-site parking and shuttle service to the winery. [Shuttle service shall be required for all large marketing-Type 2, 3 and 4 marketing events pursuant to COA Nos. 4.3 \(b\), \(c\) and \(d\) above. \[Standard Condition revised by Board of Supervisors\]](#)

Auction Napa Valley (ANV) events need not be included in a participating winery’s marketing plan because they are covered by ANV’s Category 5 Temporary Permit. The winery may utilize any ANV event authorized in this permit for another charitable event of similar size.

4.4 ON-PREMISES CONSUMPTION

In accordance with State law and the PBES Director’s July 17, 2008 memo, “Assembly Bill 2004 (Evans) & the Sale of Wine for Consumption On-Premises,” on-premises consumption of wine produced on-site and purchased from the winery may occur solely within hospitality building designated indoor tasting areas. Any and all visitation associated with on-premises consumption shall be subject to the maximum per person weekday and weekend daily tours and tastings visitation limitation and/or applicable limitations of permittee’s marketing plan set forth in COA Nos.4.2 and 4.3 above.

4.5 RESIDENCE OR NON-WINERY STRUCTURES

Unless specifically authorized by this permit or a previously approved permit, the existing single-family residence, guest cottage, and miscellaneous structures associated with vineyard operations shall not be used for commercial purposes or in conjunction with the operation and/or visitation/marketing program for the winery. If the residence is rented, it shall only be rented for periods of 30 days or more, pursuant to the County Code.

4.6 GRAPE SOURCE

At least 75% of the grapes used to make the winery's still wine or the still wine used by the winery to make sparkling wine shall be grown within Napa County. The permittee shall keep records of annual production documenting the source of grapes to verify that 75% of the annual production is from Napa County grapes. The report shall recognize the Agriculture Commission's format for County of origin of grapes and juice used in the Winery Production Process. The report shall be provided to the PBES Department upon request, but shall be considered proprietary information and not available to the public.

4.7 COMPLIANCE REVIEW

Permittee shall obtain and maintain all permits (use permits and modifications) and licenses from the California Department of Alcoholic Beverage Control (ABC) and United States Tax and Trade Bureau (TTB), and California Department of Food and Agriculture (CDFA) Grape Crush Inquiry data, all of which are required to produce and sell wine. In the event the required ABC and/or TTB permits and/or licenses are suspended or revoked, permittee shall cease marketing events and tours and tastings until such time as those ABC and/or TTB permits and licenses are reinstated.

Visitation log books, visitor reports, custom crush client records, and any additional documentation determined by Staff to be necessary to evaluate compliance may be requested by the County for any code compliance. The permittee (and their successors) shall be required to participate fully in the winery code compliance review process.

4.8 RENTAL/LEASING

No winery facilities, or portions thereof, including, without limitation, any kitchens, barrel storage areas, or warehousing space, shall be rented, leased, or used by entities other than persons producing and/or storing wine at the winery, such as alternating proprietors and custom producers, except as may be specifically authorized in this Permit or pursuant to the Temporary Events Ordinance (County Code Chapter 5.36).

4.9 GROUND WATER MANAGEMENT – WELLS **[RESERVED]**

4.10 AMPLIFIED MUSIC

There shall be no amplified sound system or amplified music utilized outside of approved, enclosed, winery buildings.

4.11 TRAFFIC

To the maximum extent feasible, scheduling of reoccurring vehicle trips to and from the site for employees and deliveries shall not occur during peak travel times (between 3:00 p.m. - 5:30 p.m.). All road improvements on private property required per Engineering Services shall be maintained in good working condition and in accordance with the Napa County Roads and Streets Standards.

4.12 PARKING

The location of visitor parking and truck loading zone areas shall be identified along with proposed circulation and traffic control signage (if any).

Parking shall be limited to approved parking spaces only and shall not occur along access or public roads or in other locations except during harvest activities ~~and approved marketing events~~. In no case shall parking impede emergency vehicle access or public roads. [Standard Condition revised by Board of Supervisors]

4.13 BUILDING DIVISION – USE OR OCCUPANCY CHANGES

Please contact the Building Division with any questions regarding the following:

In accordance with the California Building Code (CBC), no change shall be made in the use of occupancy of an existing building unless the building is made to comply with the requirements of the current CBC for a new building.

4.14 FIRE DEPARTMENT – TEMPORARY STRUCTURES

Please contact the Fire Department with any questions regarding the following:

The permittee and/or designee shall obtain a tent permit from the Fire Department for any temporary structures utilized for authorized marketing events allowed per COA No. 4.3 above.

4.15 NAPA COUNTY MOSQUITO ABATEMENT PROGRAM

The installation, operation and maintenance of the fountain in the east terrace shall be in conformance with the Napa County Mosquito Abatement District's program for eliminating mosquito sources and managing mosquito-breeding areas in order to reduce mosquitoes to a tolerable and healthful level.

4.16 GENERAL PROPERTY MAINTENANCE – LIGHTING, LANDSCAPING, PAINTING, OUTDOOR EQUIPMENT STORAGE, AND TRASH ENCLOSURE AREAS

- a. All lighting shall be permanently maintained in accordance with the lighting and building plans approved by the County. Lighting utilized during harvest activities is exempt from this requirement.
- b. All landscaping and outdoor screening, storage, and utility structures shall be permanently maintained in accordance with the landscaping and building plans approved by the County. No stored items shall exceed the height of the screening. Exterior winery equipment shall be maintained so as to not create a noise disturbance or exceed noise thresholds in the County Code.
- c. The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division prior to any change in

paint colors that differs from the approved building permit. Highly reflective surfaces are prohibited.

- d. Designated trash enclosure areas shall be made available and properly maintained for intended use.

4.17 NO TEMPORARY SIGNS

Temporary off-site signage, such as “A-Frame” signs, is prohibited.

4.18 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – OPERATIONAL CONDITIONS

The attached project conditions of approval include all of the following County Divisions, Departments and Agencies’ requirements. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Engineering Services Division operational conditions as stated in their Memorandum dated March 16, 2018.
- b. Environmental Health Division operational conditions as stated in their Memorandum dated March 23, 2019.
- c. Building Inspection Division plan operational conditions as stated in their Memorandum dated January 12, 2017
- d. Public Works Department operational conditions as stated in their Memorandum dated March 14, 2018.
- e. CalFire operational conditions as stated in their Memorandum dated April 9, 2018.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify this permit.

4.19 OPERATIONAL MITIGATION MEASURES

The permittee shall comply with the following operational mitigation measures identified in the adopted Initial Study/Mitigated Negative Declaration and Project Revision Statement/Mitigation Monitoring and Reporting Program prepared for the project:

- a. MM TRANS-1: The permittee shall maintain landscaping on a regular basis along the project’s Ponti Road frontage to the north and south of the project driveway (located on APN 030-280-010 and APN 030-280-016 only) in order to maintain acceptable sight lines to accommodate 35 mile per hour traffic speeds on Ponti Road. No items that are wider than 18 inches can be taller than 30 inches other

than street trees and traffic devices. Street trees should be deciduous and have branches lower than 4 feet in height removed once the tree is established.

Method of Monitoring: Prior to the issuance of a building permit, an annual landscape maintenance program in conjunction with the project's landscape plan shall be submitted to the Planning Division and the Public Works Department for review and approval.

Responsible Agency(ies): Planning Division and Public Works

4.20 OTHER CONDITIONS APPLICABLE TO THE OPERATIONAL ASPECTS OF THE PROJECT

a. Groundwater Management Program

~~a-~~ The parcel shall be limited to 29.40 acre-feet of groundwater per year for all water consuming activities on the parcel. A Groundwater Demand Management Program shall be developed and implemented for the property as outlined in COA 6.15(b) below.

In the event that changed circumstances or significant new information provide substantial evidence¹ that the groundwater system referenced in the Use Permit would significantly affect the groundwater basin, the PBES Director shall be authorized to recommend additional reasonable conditions on the permittee, or revocation of this permit, as necessary to meet the requirements of the County Code and to protect public health, safety, and welfare. [Revised by the Planning Division]

- b. ~~Within 30 days of permit approval~~ Prior to issuance of a Building Permit, the permittee shall submit a Traffic Demand Management Plan to the Planning Division and the Public Works Department for review and approval prior to the Issuance of a Final Certificate of Occupancy which includes, but not limited to, the following measures that will reduce peak-hour vehicle trips program such as encouraging guests to carpool or use a shuttle or van measures, promoting employee carpooling, implementing Guaranteed Ride Home (GHR) program, and providing lunch on-site. Such plan shall be implemented upon County authorization and may be subject to submittal of annual reporting requirements upon request in response to the County development of a Vehicle Mile Traveled (VMT) Reduction Program. [Revised by the Planning Division]

¹ Substantial evidence is defined by case law as evidence that is of ponderable legal significance, reasonable in nature, credible and of solid value. The following constitute substantial evidence: facts, reasonable assumptions predicated on facts; and expert opinions supported by facts. Argument, speculation, unsubstantiated opinion or narrative, or clearly inaccurate or erroneous information do not constitute substantial evidence.

- c. A minimum of 30 days prior notice of marketing events when 100 or more guests are held shall be provided by the permittee to the owners of the following properties located on Ponti Road: APN 030-280-012; APN 030-280-016; APN 030-280-019; APN 030-280-025; APN 030-280-027; APN 030-280-028; APN 030-280-029; APN 030-280-032; APN 030-280-033; APN 030-200-073; APN 030-200-074; APN 030-200-076; and APN 030-200-079. Said notice will include a cell phone number of a contact person who will be on-site during the event with authority to immediately address any issues that may arise. Copies of such notices shall be provided to the PBES Department. [Added by the Planning Commission.]

4.21 PREVIOUS CONDITIONS [RESERVED]

PART III

5.0 PREREQUISITE FOR ISSUANCE OF PERMITS

5.1 PAYMENT OF FEES

No building, grading or sewage disposal permits shall be issued or other permits authorized until all accrued planning permit processing fees have been paid in full. This includes all fees associated with plan check and building inspections, associated development impact fees established by County Ordinance or Resolution, and the Napa County Affordable Housing Mitigation Fee in accordance with County Code.

6.0 GRADING/DEMOLITION/ENVIRONMENTAL/BUILDING PERMIT/OTHER PERMIT PREREQUISITES

Permittee shall comply with the following with the submittal of a grading, demolition, environmental, building and/or other applicable permit applications.

6.1 COMPLIANCE WITH OTHER DEPARTMENTS AND AGENCIES – PLAN REVIEW, CONSTRUCTION AND PREOCCUPANCY CONDITIONS

The attached project conditions of approval include all of the following County Divisions, Departments and Agencies' requirements. The permittee shall comply with all applicable building codes, zoning standards, and requirements of County Divisions, Departments and Agencies at the time of submittal and may be subject to change. Without limiting the force of those other requirements which may be applicable, the following are incorporated by reference as enumerated herein:

- a. Engineering Services Division plan review/construction/ preoccupancy conditions as stated in their Memorandum dated March 16, 2018.
- b. Environmental Health Division plan review/construction/ preoccupancy conditions as stated in their Memorandum dated March 23, 2018.

- c. Building Inspection Division plan review/construction/ preoccupancy conditions as stated in their Memorandum dated January 12, 2013.
- d. Public Works Department plan review/ construction/ preoccupancy conditions as stated in their Memorandum dated March 14, 2018.
- e. Cal Fire plan review/ construction/ preoccupancy conditions as stated in their Memorandum dated April 9, 2018.

The determination as to whether or not the permittee has substantially complied with the requirements of other County Divisions, Departments and Agencies shall be determined by those County Divisions, Departments or Agencies. The inability to substantially comply with the requirements of other County Divisions, Departments and Agencies may result in the need to modify the permit.

6.2 BUILDING DIVISION – GENERAL CONDITIONS

- a. A building permit shall be obtained for all construction occurring on the site not otherwise exempt by the California Building Code (CBC) or any State or local amendment adopted thereto.
- b. If there are any existing structures and/or buildings on the property that will need to be removed to accommodate construction activities, a separate demolition permit shall be required from the Building Division prior to removal. The permittee shall provide a “J” number from the Bay Area Air Quality Management District (BAAQMD) at the time the permittee applies for a demolition permit if applicable.
- c. All areas of newly designed and newly constructed buildings, facilities and on-site improvements must comply with the CBC accessibility requirements, as well as, American with Disability Act requirements when applicable. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided as required per the CBC.

6.3 LIGHTING – PLAN SUBMITTAL

- a. Two (2) copies of a detailed lighting plan showing the location and specifications for all lighting fixtures to be installed on the property shall be submitted for Planning Division review and approval. All lighting shall comply with the CBC.
- b. All exterior lighting, including landscape lighting, shall be shielded and directed downward, shall be located as low to the ground as possible, shall be the minimum necessary for security, safety, or operations; on timers; and shall incorporate the use of motion detection sensors to the greatest extent practical. All lighting shall be shielded or placed such that it does not shine directly on adjacent properties or impact vehicles on adjacent streets. No flood-lighting or sodium lighting of the building is permitted, including architectural highlighting and spotting. Low-level lighting shall be utilized in parking areas as opposed to elevated high-

intensity light standards. Lighting utilized during harvest activities is exempt from this requirement.

6.4 LANDSCAPING – PLAN SUBMITTAL

- a. Two (2) copies of a detailed final landscaping and irrigation plan, including parking details, shall be submitted with the building permit application package for the Planning Division's review and approval prior to the issuance of any building permit associated with this Use Permit. The plan shall be prepared pursuant to the County's Water Efficient Landscape Ordinance (Chapter 18.118 of the County Code) requirements in effect at the time of building permit application submittal, as applicable, and shall indicate the names and locations of all plant materials to be used along with their method of maintenance.
- b. Plant materials shall be purchased locally when practical, and to the greatest extent possible, the plant materials shall be the same native plants found in Napa County. The Agricultural Commissioner's office shall be notified of all impending deliveries of live plants with points of origin outside of Napa County.
- c. No trees greater than 6" diameter at breast height shall be removed, except for those identified on the submitted site plan. Any Oak trees removed as a result of the project shall be replaced at a 2:1 ratio and shown on the landscaping plans for the Planning Division's review and approval. Trees to be retained shall be protected during construction by fencing securely installed at the outer most dripline of the tree or trees. Such fencing shall be maintained throughout the duration of the work undertaken in connection with the winery development/construction. In no case shall construction material, debris or vehicles be stored in the fenced tree protection area.
- d. Evergreen screening shall be installed between the industrial portions of the operation (e.g. tanks, crushing area, parking area, etc.) and any off-site residence from which these areas can be viewed.

6.5 COLORS

The colors used for the roof, exterior walls and built landscaping features of the winery shall be limited to earth tones that will blend the facility into the colors of the surrounding site specific vegetation. The permittee shall obtain the written approval of the Planning Division in conjunction with building permit review and/or prior to painting the building. Highly reflective surfaces are prohibited.

6.6 OUTDOOR STORAGE/SCREENING/UTILITIES

- a. Details of outdoor storage areas and structures shall be included on the building and landscape plans. All outdoor storage of winery equipment shall be screened from the view of residences of adjacent properties by a visual barrier consisting of fencing or dense landscaping. No stored item shall exceed the height of the screening. Water and fuel tanks, and

similar structures, shall be screened to the extent practical so as to not be visible from public roads and adjacent parcels.

- b. New utility lines required for this project that are visible from any designated scenic transportation route (see Community Character Element of the General Plan and the County Code) shall be placed underground or in an equivalent manner be made virtually invisible from the subject roadway.
- c. Exterior winery equipment shall be located, enclosed or muffled so as not to exceed noise thresholds in the County Code.

6.7 TRASH ENCLOSURES

Adequate area must be provided for collection and loading of garbage and recyclables generated by the project. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the pedestrian and vehicle access needed for the collection site. The garbage and recycling enclosure shall meet the minimum enclosure requirements established by staff and the franchised hauler, which shall be included in the building permit submittal.

6.8 ADDRESSING

All project site addresses shall be determined by the PBES Director, and be reviewed and approved by the United States Post Office. The PBES Director reserves the right to issue or re-issue an appropriate situs address at the time of issuance of any building permit to ensure proper identification and sequencing of numbers. For multi-tenant or multiple structure projects, this includes building permits for later building modifications or tenant improvements.

6.9 HISTORIC RESOURCES

All permitted work performed on any historic resources shall follow the latest edition of the Secretary of the Interior's Standards for Historic Preservation and Guidelines for Treatment of Historic Properties (Standards). Written verification that such work meets the Standards shall be submitted by a qualified historic architect for review and approval by the PBES Department prior to issuance of any grading or building permit.

6.10 DEMOLITION ACTIVITIES **[RESERVED]**

6.11 VIEWSHED – EXECUTION OF USE RESTRICTION **[RESERVED]**

6.12 PERMIT PREREQUISITE MITIGATION MEASURES

The permittee shall comply with the following permit prerequisite mitigation measures identified in the adopted Initial Study/Mitigated Negative Declaration and Project Revision Statement/Mitigation Monitoring and Reporting Program prepared for the project:

- a. MM TRANS-1: The permittee shall maintain landscaping on a regular basis along the project's Ponti Road frontage to the north and south

of the project driveway (located on APN 030-280-010 and APN 030-280-016 only) in order to maintain acceptable sight lines to accommodate 35 mile per hour traffic speeds on Ponti Road. No items that are wider than 18 inches can be taller than 30 inches other than street trees and traffic devices. Street trees should be deciduous and have branches lower than 4 feet in height removed once the tree is established.

Method of Monitoring: Prior to the issuance of a building permit, an annual landscape maintenance program in conjunction with the project's landscape plan shall be submitted to the Planning Division and the Public Works Department for review and approval.

Responsible Agency(ies): Planning Division and Public Works

6.13 PARCEL CHANGE REQUIREMENTS **[RESERVED]**

6.14 FINAL MAPS **[RESERVED]**

6.15 OTHER CONDITIONS APPLICABLE TO THE PROJECT PERMITTING PROCESS

- a. Prior to the issuance of a grading or building permit, the permittee shall obtain an encroachment permit from the Public Works Department for any new improvements to the Ponti Road driveway entrance.
- b. Groundwater Demand Management Program
 1. The permittee shall install a meter on each well serving the parcel. Each meter shall be placed in a location that will allow for the measurement of all groundwater used on the project parcel. Prior to the issuance of a grading or building permit for the winery or expanding any operations as approved under this modification, the permittee shall submit for review and approval by the Director of Public Works a groundwater demand management plan which includes a plan for the location and the configuration of the installation of a meter on all wells serving the parcel.
 2. The Plan shall identify how best available technology and best management water conservation practices will be applied throughout the parcel.
 3. The Plan shall identify how best management water conservation practices will be applied where possible in the structures on site. This includes but is not limited to the installation of low flow fixtures and appliances.
 4. As a groundwater consuming activity already exists on the property, meter installation and monitoring shall begin immediately

and the first monitoring report is due to the County within 120 days of approval of this permit.

5. For the first twelve months of operation under this permit, the permittee shall read the meters at the beginning of each month and provide the data to the Public Works Director monthly. If the water usage on the property exceeds, or is on track to exceed, 29.40 acre-feet per year, or if the permittee fails to report, additional reviews and analysis and/or a corrective action program at the permittee's expense shall be required and shall be submitted to the Public Works Director and the PBES Director for review and action.
6. The permittee's wells shall be included in the Napa County Groundwater Monitoring program if the County finds the well suitable.
7. At the completion of the reporting period per 6.15(b)(5) above, and so long as the water usage is within the maximum acre-feet per year as specified above, the permittee may begin the following meter reading schedule:
 - i. On or near the first day of each month the permittee shall read the water meter, and provide the data to the Public Works Director during the first weeks of April and October. The Public Works Director, or the Director's designated representative, has the right to access and verify the operation and readings of the meters during regular business hours.

c. Prior to the issuance of a building or grading permit, the design and placement of the two turnout areas proposed by the permittee on the east side of Ponti Road [APN 030-280-010] shall be submitted for review and approval by the Napa County Fire Marshal and the Engineering Division. Such turnouts shall be installed prior to the final issuance of certificate of occupancy for the winery. [Added by the Planning Commission.]

e.d. In conjunction with building permit application submittal, the permittee shall revise the final architectural drawings and landscape plans so that any prior references to an outdoor "AB 2004 Picnic Area" is removed and that area shall be shown only as landscaped area. The landscaped area shall not be used for marketing events and/or tours and tastings. Per COA No. 4.4, on-site consumption consistent with AB 2004 may only occur within the hospitality building designated indoor tasting areas. [Added by the Board of Supervisors]

7.0 PROJECT CONSTRUCTION

Permittee shall comply with the following during project construction:

7.1 **SITE IMPROVEMENTS**

Please contact Engineering Services with any questions regarding the following.

a. **GRADING AND SPOILS**

All grading and spoils generated by construction of the project facilities shall be managed per Engineering Services direction. Alternative locations for spoils are permitted, subject to review and approval by the PBES Director, when such alternative locations do not change the overall concept, and do not conflict with any environmental mitigation measures or conditions of approval.

b. **DUST CONTROL**

Water and/or dust palliatives shall be applied in sufficient quantities during grading and other ground disturbing activities on-site to minimize the amount of dust produced. Outdoor construction activities shall not occur when average wind speeds exceed 20 mph.

c. **AIR QUALITY**

During all construction activities the permittee shall comply with the most current version of BAAQMD Basic Construction Best Management Practices including but not limited to the following, as applicable:

1. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. The BAAQMD's phone number shall also be visible.
2. Water all exposed surfaces (e.g., parking areas, staging areas, soil piles, grading areas, and unpaved access roads) two times per day.
3. Cover all haul trucks transporting soil, sand, or other loose material off-site.
4. Remove all visible mud or dirt traced onto adjacent public roads by using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
5. All vehicle speeds on unpaved roads shall be limited to 15 mph.
6. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
7. Idling times shall be minimized either by shutting off equipment when not in use or reducing the maximum idling time to five (5) minutes (as required by State Regulations). Clear signage shall be provided for construction workers at all access points.

8. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator. Any portable engines greater than 50 horsepower or associated equipment operated within the BAAQMD's jurisdiction shall have either a California Air Resources Board (ARB) registration Portable Equipment Registration Program (PERP) or a BAAQMD permit. For general information regarding the certified visible emissions evaluator or the registration program, visit the ARB FAQ http://www.arb.ca.gov/portable/perp/perpfact_04-16-15.pdf or the PERP website <http://www.arb.ca.gov/portable/portable.htm>.

d. **STORM WATER CONTROL**

The permittee shall comply with all construction and post-construction storm water pollution prevention protocols as required by the County Engineering Services Division, and the California Regional Water Quality Control Board.

7.2 **ARCHEOLOGICAL FINDING**

In the event that archeological artifacts or human remains are discovered during construction, work shall cease in a 50-foot radius surrounding the area of discovery. The permittee shall contact the PBES Department for further guidance, which will likely include the requirement for the permittee to hire a qualified professional to analyze the artifacts encountered and to determine if additional measures are required.

If human remains are encountered during project development, all work in the vicinity must be halted, and the Napa County Coroner informed, so that the Coroner can determine if an investigation of the cause of death is required, and if the remains are of Native American origin. If the remains are of Native American origin, the permittee shall comply with the requirements of Public Resources Code Section 5097.98.

7.3 **CONSTRUCTION NOISE**

Construction noise shall be minimized to the greatest extent practical and feasible under State and local safety laws, consistent with construction noise levels permitted by the General Plan Community Character Element and the County Noise Ordinance. Construction equipment muffling and hours of operation shall be in compliance with the County Code. Equipment shall be shut down when not in use. Construction equipment shall normally be staged, loaded, and unloaded on the project site, if at all practicable. If project terrain or access road conditions require construction equipment to be staged, loaded, or unloaded off the project site (such as on a neighboring road or at the base of a hill), such activities shall only occur daily between the hours of 8 am to 5 pm.

7.4 **CONSTRUCTION MITIGATION MEASURES [RESERVED]**

7.5 **OTHER CONSTRUCTION CONDITIONS APPLICABLE TO THE PROJECT PROPOSAL [RESERVED]**

8.0 TEMPORARY CERTIFICATE OF OCCUPANCY - PREREQUISITES

A Temporary Certificate of Occupancy (TCO) may be granted pursuant to the County Code to allow the commencement of production activities prior to completion of all project improvements. Permittee shall comply with the following before a TCO is granted:

8.1 TEMPORARY OCCUPANCY

All life and safety conditions shall be addressed prior to issuance of a TCO by the County Building Official. TCOs shall not be used for the occupancy of hospitality buildings and shall not exceed the maximum time allowed by the County Code which is 180 days. Departments and/or agencies with jurisdiction over the project are authorized as part of the TCO process to require a security deposit or other financial instrument to guarantee completion of unfinished improvements.

9.0 FINAL CERTIFICATE OF OCCUPANCY – PREREQUISITES

Permittee shall comply with the following before a Final Certificate of Occupancy is granted by the County Building Official, which upon granting, authorizes all use permit activities to commence.

9.1 FINAL OCCUPANCY

All project improvements, including compliance with applicable codes, conditions, and requirements of all Departments and Agencies with jurisdiction over the project, shall be completed.

9.2 SIGNS

Detailed plans, including elevations, materials, color, and lighting for any winery identification or directional signs shall be submitted to the Department for administrative review and approval prior to installation. Administrative review and approval is not required if signage to be installed is consistent with signage plans submitted, reviewed and approved as part of this permit approval. All signs shall meet the design standards as set forth in the County Code. At least one legible sign shall be placed at the property entrance with the words “Tours and Tasting by Prior Appointment Only” to inform the public of same. Any off-site signs allowed shall be in conformance with the County Code.

9.3 GATES/ENTRY STRUCTURES

Any gate installed at the winery entrance shall be reviewed by the PBES Department and the Fire Department to assure that the design allows large vehicles, such as motorhomes, to turn around if the gate is closed without backing into the public roadway, and that fire suppression access is available at all times. If the gate is part of an entry structure an additional permit shall be required pursuant to the County Code and in accordance with the Napa County Roads and Street Standards. A separate entry structure permit is not required if the entry structure is consistent with entry structure plans submitted, reviewed, and approved as part of this permit approval.

- 9.4 LANDSCAPING
Landscaping shall be installed in accordance with the approved landscaping plan.
- 9.5 ROAD OR TRAFFIC IMPROVEMENT REQUIREMENTS **[RESERVED]**
- 9.6 DEMOLITION ACTIVITIES **[RESERVED]**
- 9.7 GRADING SPOILS
All spoils shall be removed in accordance with the approved grading permit and/or building permit.
- 9.8 MITIGATION MEASURES APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY **[RESERVED]**
- 9.9 OTHER CONDITIONS APPLICABLE PRIOR TO ISSUANCE OF A FINAL CERTIFICATE OF OCCUPANCY
 - a. All required meters shall be installed and all groundwater usage monitoring required in COA 4.20(a) and 6.15(b) shall commence prior to final occupancy.



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1195 Third Street, Suite 210
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David Morrison
Director

MEMORANDUM

To: Charlene Gallina, Planning	From: Jeannette Doss, Engineering <i>JD</i>
Date: March 16, 2018	Re: Scarlett Winery Use Permit – Engineering CoA 1052 Ponti Road, St. Helena, CA P16-00428 APN 030-280-010

The Engineering Division (Engineering) has reviewed the submittal package for the above proposed project, generally requesting the following:

To construct a new 30,000 gallon per year winery with a commercial kitchen, new parking lot, outdoor covered crush pad, driveway, and the installation of a new wastewater treatment system. The application also includes a visitation and marketing plan.

Based upon the information provided in the application, Engineering finds the application **complete** and recommends the following conditions of approval:

OPERATIONAL CHARACTERISTICS

- Any roadway, access drive, and parking area improvements that are required in order to comply with the latest edition of Napa County Road and Street Standards shall be completed **prior to execution** of any new entitlements approved under this Use Permit.

PREREQUISITES FOR ISSUANCE OF PERMITS

- All on site civil improvements including but not limited to the excavation, fill, general grading, drainage, curb, gutter, surface drainage, storm drainage, parking and drive isles, shall be constructed according to plans prepared by a registered civil engineer, which will be reviewed and approved by the Engineering Division of the Napa County Planning, Building, and Environmental Services Department (PBES) **prior to the commencement** of any on site land preparation or construction. Plans shall be wet signed and submitted with the building and/or grading permit documents at the time of permit application. A plan check fee will apply.

3. **Prior to issuance of a building or grading permit** the owner shall submit the necessary documents for Erosion Control as determined by the area of disturbance of the proposed development in accordance with the Napa Countywide Stormwater Pollution Prevention program Erosion and Sediment Control Plan Guidance for Applicant and Review Staff dated December 2014.
4. **Prior to issuance of a building permit** the owner shall prepare a Regulated Project Stormwater Control Plan (SCP) in accordance with the latest edition of the BASMAA Post-Construction Manual for review and approval by the Engineering Division in PBES.
5. **Prior to issuance of a building or grading permit** the owner shall demonstrate on the plans that all roadways, access driveways, and parking areas serving the project either currently meet the requirements and/or how they will be improved to meet the requirements as outlined in the latest edition of the Napa County Road & Street Standards for Commercial development at the time of approval of this application (P16-00428).
6. **Prior to issuance of a building or grading permit** all newly proposed and/or modified loading areas, outdoor material storage area, trash areas, and processing areas, including but not limited to wine grape crushing/pressing, juice fermentation, blending and fining, filtration and bottling (including mobile bottling), shall be shown on the improvement plans. Areas shall be paved and performed indoors or under cover and graded to preclude stormwater run-on/runoff. The installation of storm drains in processing areas is prohibited. For processing areas that generate liquid wastes, slope the area to a drain an approved collection system.

PREREQUISITES FOR TEMPORARY CERTIFICATE OF OCCUPANCY

7. All roadway, access drive, and parking area improvements shall be completed **prior to** issuance of temporary occupancy.

**** If no temporary occupancy is requested, then the above become requirements prior to final occupancy.**

PREREQUISITES FOR FINAL CERTIFICATION OF OCCUPANCY

8. A registered Civil Engineer shall submit to PBES, Engineering Division written certification of completion of grading in accordance with the approved grading plans prior to requesting final inspection of the building and/or grading permit. Certification shall include line grade, surface drainage, elevation, and location of permitted grading on the lot.
9. Operations and Maintenance Agreement for post construction Stormwater facilities must be legally recorded.

10. Site shall be completely stabilized to the satisfaction of the County Engineer prior to Final Occupancy.

Any changes in use may necessitate additional conditions for approval.

If you have any questions regarding the above items, please contact Jeannette Doss from Napa County Planning, Building, and Environmental Services Department, Engineering and Conservation Division, at (707) 259-8179 or by email at Jeannette.Doss@countyofnapa.org



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David Morrison
Director

MEMORANDUM

To: Charlene Gallina, Project Planner	From: Kim Withrow, Environmental Health Supervisor
Date: March 23, 2018	Re: Use Permit Mod – Scarlett Winery APN: 030-280-010 Project #: P16-00428

This Division has reviewed a revised application requesting approval to construct a new winery and related improvements as described and depicted in application materials. This Division has no objection to approval of the application with the following conditions of approval:

Prior to building permit issuance:

1. The water supply and related components must comply with the California Safe Drinking Water Act and Related Laws. This will require plan review and approval prior to approval of building permits. The technical report must be completed by a licensed engineer with experience in designing water systems. The preliminary technical report must be submitted to the Regional Water Quality Control Board staff a minimum of six (6) months prior to beginning any water-related improvement in accordance with the California Health and Safety Code, Section 116527. Prior to occupancy, the owner must apply for and obtain an annual operating permit for the water system from this Division. The applicant must comply with all required monitoring and reporting.
2. Complete plans and specifications for the food preparation, service area(s), storage area(s) and the employee restrooms must be submitted for review and approval by this Division prior to issuance of any building permits for said areas. An annual food permit will be required.
3. Plans for the proposed alternative sewage treatment system(s) as described in the wastewater feasibility report dated February 2017 prepared by Bartelt Engineering shall be designed by a licensed Civil Engineer or Registered Environmental Health Specialist and be accompanied by complete design criteria based upon local conditions. No building clearance (or issuance of a building permit) for any structure that generates wastewater to be disposed of by this system(s) will be approved until such plans are approved by this Division.

Please be advised-requirements for process wastewater treatment systems in Napa County are being reviewed and may be modified to comply with Regional Water Quality Control Board (RWQCB) minimum standards. At a minimum pretreatment may be required on all process wastewater systems.

Additionally, if the existing pond will be utilized for wastewater treatment/storage, a soils engineer must investigate and certify that the compaction of the existing pond meets the current permeability requirement for wastewater ponds or the pond shall be lined with an approved liner. This information must be included with the design submittal for the private sewage disposal system and must be approved prior to issuance of sewage permits. Any necessary repairs to the pond must be addressed in the design submittal and be overseen and certified by a soils engineer.

4. A permit to construct the proposed wastewater treatment system(s) must be secured from this Division prior to approval of a building clearance (or issuance of a building permit) for any structure that generates wastewater to be disposed of by this system.
5. Adequate area must be provided for collection of recyclables. The applicant must work with the franchised garbage hauler for the service area in which they are located, in order to determine the area and the access needed for the collection site. The designated collection area shall remain available and be properly maintained for its intended use. The trash enclosure must be shown on the building permit application plan set.

During construction and/or prior to final occupancy:

6. During the construction, demolition, or renovation period of the project the applicant must use the franchised garbage hauler for the service area in which they are located for all wastes generated during project development, unless applicant transports their own waste. If the applicant transports their own waste, they must use the appropriate landfill or solid waste transfer station for the service area in which the project is located.
7. Annual alternative sewage treatment system monitoring permit(s) must be obtained for the alternative sewage treatment system /private sewage disposal system(s) prior to issuance of a final on the project. The septic system monitoring, as required by this permit, must be fully complied with.
8. Annual water system and food facility operating permits must be obtained for the small public water system and commercial food facility prior to issuance of a final on the project.

Upon final occupancy and thereafter:

9. Pursuant to Chapter 6.95 of the California Health and Safety Code, businesses that store hazardous materials above threshold planning quantities (55 gallons liquid, 200 cubic feet compressed gas, or 500 pounds of solids) shall obtain a permit, file an approved

Hazardous Materials Business Plan to <http://cers.calepa.ca.gov/>, and be approved by this Division within 30 days of said activities.

10. The use of the absorption field/drain field area shall be restricted to activities which will not contribute to compaction of the soil with consequent reduction in soil aeration. Activities which must be avoided in the area of the septic system include equipment storage, traffic, parking, pavement, livestock, etc.
11. All solid waste shall be stored and disposed of in a manner to prevent nuisances or health threats from insects, vectors and odors.
12. All diatomaceous earth/bentonite must be disposed of in an approved manner. If the proposed septic system is an alternative sewage treatment system the plan submitted for review and approval must address bentonite disposal.
13. Some proposed food service will be catered and therefore, must be prepared and served by a Napa County permitted caterer. If the caterer selected does not possess a valid Napa County Permit to operate, refer the business to this Division for assistance in obtaining the required permit prior to providing any food service.
14. The applicant shall provide portable toilet facilities for guest use during events of 75 persons or more as indicated in the wastewater feasibility report/use permit application. The portable toilet facilities must be pumped by a Napa County permitted pumping company.



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Planning, Building & Environmental Services

1195 Third Street, Suite 210
Napa, CA 94559
www.countyofnapa.org

David Morrison
Director

MEMORANDUM

To: Tendai Mtunga	From: Kevin Ruybal, Chief Building Official
Date: January 12, 2017	Re: Scarlett Winery P16-00428

Building Inspection Division Planning Use Permit Review Comments

Address: 1052 Ponti Rd., Napa CA 94558

APN: 030-280-010-000

Project: Scarlett Winery

Contact: Sherrett Reicher, Donna Oldford

Description: Request to construct a new 30,000 gallon winery with tours by appointment, marketing, tastings, commercial kitchen and a waste water treatment system.

Comments: The Building Division is not reviewing this project for compliance with the California Building Standards Codes at this time; the Building Division is reviewing the proposed Planning entitlements only. The Building Division has no issues or concerns with the approval of the Use Permit P16-00428; it is a Planning entitlement and does not in itself authorize any construction activities. Separate building permits shall be required.

The plans provided for Use Permit application P16-00428 do not provide enough information in sufficient detail to determine all code requirements. A complete and thorough plan review will be performed at the time an application is made for the required building, plumbing, mechanical, and electrical and any other construction permits required by other Napa County Agencies. The following comments are provided to make the applicant aware of what codes the applicant will be required to comply with, as well as issues that may need to be addressed prior/during the building permit application and review process.

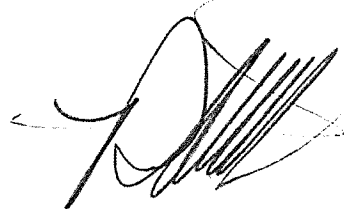
1. In accordance with the California Building Code, Chapter 1, Division 1, Section 1.1.9, which states, "only those standards approved by the California Building Standards Commission that are effective at the time of application for a building permit is submitted shall apply to the plans and specifications for,

and to the construction under that permit". The codes adopted at this time are 2013 California Building Standards Codes, Title 24, part 2, Building volumes 1 & 2, part 3 Electrical, part 4 Mechanical, part 5 Plumbing, part 6 Energy, part 9 Fire, and part 11 Green Buildings.

2. The site and associated buildings are required to be accessible to persons with disabilities. This includes, but not limited to, a van accessible parking stall, accessible path of travel from the parking stall to all buildings and areas on the site that are available to employees and the public.
3. All cooking equipment in occupancies other than residential shall be commercial grade. Commercial kitchens are required to comply with the California Mechanical Code. Cooking equipment used in processes producing steam, smoke or grease-laden vapors shall be equipped with an exhaust system that complies with all the equipment and performance requirements of the Mechanical Code, and all such equipment and performance shall be maintained per the Mechanical Code during all periods of operation of the cooking equipment. Specifically, the following equipment shall be kept in good working condition: A. Cooking Equipment. B. Hoods. C. Ducts. D Fans. E. Fire suppression systems. F. Special effluent or energy control equipment. All airflows shall be maintained. Maintenance and repairs shall be performed on all components at intervals necessary to maintain working conditions. If there is not a kitchen proposed for this winery disregard this comment.
4. Electrical room with equipment rated at 1200 amps.
5. Required panic hardware and door must swing in direction of travel.
6. Two means of egress may be required.

Issues of compliance with the California Building Code, Title 24, will be addressed during the building permit application, review and approval process. If there are any questions, please have the applicant give me a call at (707)259-8230.

All plans and documents for commercial projects are required by California Law to be prepared and coordinated under the direction of a California Licensed Design Professional, such as an Architect and/or Engineer in accordance with California Business and Professions Code Chapter 3, and the California Building Code, Chapter 1.



KEVIN RUYBAL
CHIEF BUILDING OFFICIAL
NAPA COUNTY BUILDING DIVISION
1195 THIRD STREET
NAPA CA 94559
(707)259-8230
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Department of Public Works

1195 Third Street, Suite 101
Napa, CA 94559-3092
www.countyofnapa.org/publicworks

Main: (707) 253-4351
Fax: (707) 253-4627

Steven Lederer
Director

MEMORANDUM

To: PBES Staff	From: Mike Hawkins, PE Interim Transportation Engineer
Date: March 14, 2018	Re: Scarlett Winery P16-00428

Thank you for the opportunity to review the subject permit application. I have reviewed the revised Traffic Study dated February 15, 2018 and prepared by Crane Transportation Group. The analysis is acceptable and I concur with the assumptions made, the methods used in the evaluation, and the conclusions reached. The study adequately demonstrates that the proposed use in the proposed location will not result in any significant impacts related to transportation. Therefore, no mitigation measures are required with this project. Public Works recommends approval based on the following conditions:

Conditions of Approval. The following conditions of approval shall be implemented prior to issuance of building permit:

1. Marketing events shall be scheduled such that no visitor traffic is added to the local circulation network between 3:00 and 5:30 PM
2. Landscaping at the project driveways shall be maintained to not interfere with sight lines required for safe stopping distance on public right-of way. No items that are wider than 18 inches can be taller than 30 inches other than street trees and traffic devices. Street trees should be deciduous and have branches lower than 4 feet in height removed once the tree is established.

Please contact me at Michael.Hawkins@countyofnapa.org or call (707) 259-8279 if you have questions or need additional information.



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Napa County Fire Department
Fire Marshal's Office
Hall of Justice, 2nd Floor
1125 3rd Street
Napa, CA 94559

Office: (707) 299-1461

Garrett Veyna
Fire Marshal

MEMORANDUM

TO:	Planning Department	DATE:	4/9/2018
FROM:	Adam Mone, Plans Examiner	PERMIT #	P16-00428
SUBJECT:	Scarlett Winery	APN:	030-280-010-000

The Napa County Fire Marshal's Office has reviewed the submittal package for the above proposed project. The Fire Marshal approves as submitted and requires the following conditions to be incorporated as part of permit issuance.

1. All construction and use of the facility shall comply with all applicable standards, regulations, codes and ordinances at time of Building Permit issuance.
2. Beneficial occupancy will not be granted until all fire department fire and life safety items have been installed, tested and finalized.
3. Projects shall have an approved water supply for fire protection be made available as soon as combustible material arrives on the site. All underground fire lines, pump and tank plans are required to be a separate submittal from the building or civil plans.
4. Separate submittals required for Underground Fire Lines, Fire Pump, Automatic Fire Sprinklers, Fire Alarm Systems, Kitchen Hood Extinguishing Systems, High Piled Storage (any combustible stored over 12 feet in height).
5. All buildings, facilities, and developments shall be accessible to fire department apparatus by way of approved access roadways and/or driveways. The fire access road shall comply with the requirements of the Napa County Road & Street Standards.
6. Access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be surfaced so as to provide all-weather driving capabilities. Provide an engineered analysis of the proposed roadway noting its ability to support apparatus weighing 75,000 lbs.
7. Provide fire department access roads to within 150 feet of any exterior portion of the buildings as measured by an approved route around the exterior of the building or facility.



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Garrett Veyna
Fire Marshal

MEMORANDUM

8. Commercial - Water storage (for buildings not served by a public water system) and fire flow calculations shall be provided by a Certified State Licensed Civil Engineer, C-16 licensed contractor, or registered engineer indicating compliance with Table B105.2 through Table 105.4 of the Napa County Code Amendments.
9. Commercial - Approved steamer hydrants shall be installed within 250 feet of any exterior portion of the building as measured along vehicular access roads. Private fire service mains shall be installed, tested and maintained per NFPA 24 2013 edition.
10. Commercial - Fire Department Connections (FDC) for automatic sprinkler systems shall be located fully visible and recognizable from the street or fire apparatus access roads. FDC shall be located within 50 feet of an approved fire hydrant.
11. Commercial - The minimum main size of all fire hydrants shall be 6 inches in diameter. Piping shall be installed with C-900 class 200 piping or ductile iron or equivalent per NFPA 24, 2013 edition for the installation of Underground Fire Protection Mains
12. Commercial - Developments in excess of 10,000 square feet require looped fire mains of a minimum of ten (10) inch diameter to supply fire hydrants spaced at a maximum of 300-foot intervals.
13. An automatic fire sprinkler system shall be installed in accordance with provisions set forth in the California Fire Code as amended by the County of Napa and the applicable National Fire Protection Association Standard. Automatic fire sprinkler systems shall be designed by a fire protection engineer or C-16 licensed contractor.
14. All buildings shall comply with California Fire Code, Chapter 10 Means of Egress requirements. Including but not limited to; exit signs, exit doors, exit hardware and exit illumination.

Please note that the comments noted above are based on a Fire Marshal's Office review only. There may be additional comments or information requested from other County Departments or Divisions reviewing this application submittal package. Napa County Fire Marshal's Office Development Guidelines can be found @ www.countyofnapa.org/firemarshal. Should you have any questions of me, contact me at (707)299-1466 or email at adam.mone@countyofnapa.org.



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1068

TO: Board of Supervisors
FROM: Minh C. Tran - County Executive Officer
REPORT BY: Neha Hoskins - Clerk of the Board
SUBJECT: CONFERENCE WITH LEGAL COUNSEL - POTENTIAL INITIATION OF LITIGATION

RECOMMENDATION

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL INITIATION OF LITIGATION

Potential initiation of litigation pursuant to Government Code Section 54956.9(d)(4): (1 matter)



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1051

TO: Board of Supervisors
FROM: Minh C. Tran - County Executive Officer
REPORT BY: Neha Hoskins - Clerk of the Board
SUBJECT: CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8)

RECOMMENDATION

CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8)

Property: Napa County Fairgrounds, Calistoga, California (APNs 011-140-006, 011-140-007, 011-140-056, 011-140-009, and 011-140-055)

Agency Negotiator: Minh C. Tran, County Executive Officer

Negotiating Parties: Napa County and City of Calistoga

Under Negotiation: ☒ Price ☒ Terms of Payment



Napa County

1195 THIRD STREET
THIRD FLOOR
NAPA, CA 94559

Board Agenda Letter

Board of Supervisors

Agenda Date: 10/19/2021

File ID #: 21-1077

TO: Board of Supervisors
FROM: Minh C. Tran - County Executive Officer
REPORT BY: Neha Hoskins - Clerk of the Board
SUBJECT: CONFERENCE WITH REAL PROPERTY NEGOTIATOR

RECOMMENDATION

CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section 54956.8)

Property: 2344 Old Sonoma Road, Napa, California

Agency Negotiator: Steve Lederer, Director of Public Works

Negotiating Parties: Napa County and Napa Community Real Estate Fund, LP

Under Negotiation: [X] Price [X] Terms of Payment

EXECUTIVE SUMMARY

FISCAL & STRATEGIC PLAN IMPACT

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.

BACKGROUND AND DISCUSSION

