

**NAPA COUNTY AGREEMENT NO. 250339B**

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into in Napa County, California, this 11th day of March 2025, (“Effective Date”) by and between Napa County, a political subdivision of the State of California, hereinafter referred to as “County,” and THE NAPA COMMUNITIES FIREWISE FOUNDATION doing business as NAPA FIREWISE; whose address is PO BOX 2336, NAPA, CA 94558, hereinafter referred to as “Consultant.”

**RECITALS**

- A. County wishes to obtain professional services in order to facilitate the project management and implementation of the Defensible Space/Ignition Resistant Construction program under grant funding from the Building Resilient Infrastructure and Communities (BRIC) Program.
- B. Consultant was selected to provide professional services after a competitive process conducted pursuant to RFP: FIRE122402.
- C. For good and valuable consideration, the sufficiency of which is acknowledged, County and Consultant agree as follows:

**AGREEMENT**

**ARTICLE I – SCOPE OF SERVICES**

- 1.1 Scope of Services.** Consultant shall provide professional services to County as described in Exhibit A to this Agreement, and in accordance with the Contract Documents. The Contract Documents consist of this Agreement and its Exhibits, the Request for Proposals or Qualifications issued by County (if any), and Consultant’s proposal or statement of qualifications.
- 1.2 Schedule.** Consultant shall perform and complete the scope of services in accordance with the schedule set forth in Exhibit A. Consultant shall further perform the scope of services in compliance with any interim milestones or deadlines, as may be set forth in Exhibit A.
- 1.3 Standard of Care.** Consultant represents that the professional services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Consultant shall correct any professional services falling below this standard at its sole cost and expense, if notified by County within one year after completion of such services. This remedy is in addition to any other remedies that may be available to County in law or equity.

**1.4 Correction of Deficient Services.** Consultant shall take reasonable steps to commence correction of any services that fail to meet the standard of care within seven days of receipt of written notice from County unless otherwise agreed by the parties. If Consultant fails to commence such steps within the seven day or other agreed-upon period, County may, in addition to any other remedies provided under the Contract Documents, commence correction of such services without further written notice to Consultant. If County takes such corrective action, Consultant shall be responsible for all reasonable costs incurred by County in performing such correction, including but not limited to the cost of County staff time and the amount paid to another consultant to correct the deficient services.

**1.5 Other Remedies.** This Article applies only to Consultant's obligation to correct services that do not meet the standard of care and is not intended to constitute a period of limitations or waiver of any other rights or remedies County may have regarding the Consultant's other obligations under the Contract Documents or federal or state law.

**1.6 Key Personnel.** Key personnel identified in Consultant's proposal or statement of qualifications shall be the individuals who will actually perform the services. Changes in key personnel must be reported by Consultant in writing and approved by County.

**1.7 Government Code Section 7550.** Every document or report prepared by Consultant for or under the direction of County pursuant to this Agreement shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the document or written report if the total cost for the work performed by nonemployees of County exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject or product of this Agreement, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

## ARTICLE II – DURATION OF AGREEMENT

**2.1 Term of the Agreement.** The term of this Agreement shall begin on the Effective Date entered on page 1 of this Agreement. This Agreement shall expire on March 26, 2027, unless terminated earlier in accordance with this Article. The term of this Agreement shall be renewed for an additional year, under the terms and conditions then In effect, not to exceed two (2) additional years, at the option of County and by written notice of the intent to renew no less than sixty (60) days prior to the expiration of the then current term.

**2.2 Suspension for Convenience.** County may suspend all or any portion of Consultant's performance under this Agreement at its sole option and for its convenience at no cost for a period of time not to exceed 60 days. County must give 10 days prior written notice to Consultant of such suspension. County may rescind the suspension prior to or at 60 days by providing Consultant with written notice of the rescission, at which time Consultant will be required to resume performance in compliance with the terms and provisions of this Agreement.

**2.3 Termination for Convenience.** County may terminate all or any portion of this Agreement at its sole option and for its convenience, by giving 30 days prior written notice of such termination to Consultant. The termination of the Agreement shall be effective 30 days after receipt of the notice by Consultant. After receipt of notice of termination of all or any portion of the Agreement, Consultant shall immediately discontinue all affected performance (unless the notice directs otherwise) and complete any additional work necessary for the orderly filing of documents and closing of Consultant's affected performance under the Agreement. Consultant shall deliver to County all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Consultant in performing this Agreement, whether completed or unfinished. Consultant may keep copies for its own records. County shall pay Consultant for services satisfactorily provided before the effective date of termination, and reasonable costs incurred by Consultant in providing County with the data and documents required by this paragraph. Consultant shall not be compensated for lost or anticipated profit or overhead on the terminated portion of this Agreement.

**2.4 Termination for Cause.** County may terminate this Agreement for default if Consultant fails to satisfactorily perform any material obligation required by this Agreement. Default includes Consultant's failure to timely provide services in accordance with the schedule. If Consultant fails to satisfactorily cure a default within 10 days of receiving written notice from County specifying the nature of the default, County may immediately terminate this Agreement, and terminate each and every right of Consultant, and any person claiming any rights by or through Consultant under this Agreement. The rights and remedies of County enumerated in this paragraph are in addition to and independent of County's rights under any other provision of this Agreement and any right or remedy available to County at law or in equity.

**2.4.1 Absence of Default.** If after County gives notice of termination for cause, it is determined that Consultant was not in default of a material obligation of this Agreement, the termination shall be deemed to be a termination for the convenience of County under paragraph 2.3.

**2.5 Purchasing Agent's Authority.** The County Purchasing Agent or their designee is hereby authorized to make all decisions and take all actions required under this Article to suspend or terminate this Agreement.

### ARTICLE III – COMPENSATION

**3.1 Amount of Compensation.** County shall pay Consultant for satisfactory performance of the scope of services, as follows:

**3.1.1 Rates.** County shall pay Consultant at the unit prices set forth in Exhibit B.

**3.1.2 Expenses.** Travel or other expenses will only be reimbursed by County if such expenses are specifically identified in Exhibit B. Any travel expenses must comply with the Napa County Travel Policy found in the Napa County Policy Manual, Part I, Section 43, regardless of anything to the contrary in Exhibit B.

**3.1.3 Maximum Amount.** Notwithstanding paragraphs 3.1.1 and 3.1.2, the maximum payments under this Agreement shall not exceed a total of THREE MILLION TWO HUNDRED TWENTY-NINE THOUSAND SIX HUNDRED DOLLARS (\$3,229,600) provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually provided and reimbursable expenses actually incurred.

**3.2 Payment Process.** Consultant may submit one invoice per calendar month, in arrears for services provided, to the Fire Administration Project Manager who will review the invoice to confirm its contents match the services provided during the period covered by the invoice. If approved, the invoice will be forwarded to the Napa County Auditor no later than 15 days following receipt of the invoice.

**3.2.1 Content of Invoices.** Invoices shall be in a form acceptable to the Napa County Auditor and include Consultant's name, address, Social Security or Taxpayer Identification Number, and the Napa County Agreement number. If this Agreement provides for payment based on unit prices or tasks completed, invoices shall include itemization of the hours worked, descriptions of the tasks completed during the billing period, the names and positions of person(s) performing the services, and the hourly or task rates. If the Agreement or Exhibit B provides for a fixed or lump sum price and Consultant presents monthly invoices, each invoice must indicate the percentage of work completed (e.g., 50% of design or draft report) or the milestone(s) achieved in Exhibit B, which will allow Consultant to be paid the equivalent percentage of the fixed price.

**3.2.2 Expenses.** If the Agreement provides for reimbursement of expenses, invoices shall describe the nature and cost of the expense, and the date incurred. Receipts must be included with the invoice.

**3.3 Annual Appropriation of Funds.** Consultant acknowledges that the term of this Agreement may extend over multiple County fiscal years, and that compensation under this Agreement is contingent on the Board of Supervisors appropriating funding for this Agreement for those fiscal years. This Agreement may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. County is not obligated to pay Consultant, nor is Consultant obligated to provide further services if sufficient funds have not been appropriated and authorized by the Board of Supervisors.

#### ARTICLE IV – INSURANCE

**4.1 Insurance.** Prior to commencing the scope of services, Consultant 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 insurance coverage set forth in Exhibit C.

**4.2 Inclusion in Subcontracts.** Consultant shall require its subconsultants and any other entity or person providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in Exhibit C.

## ARTICLE V – INDEMNIFICATION

**5.1 Indemnification and Hold Harmless.** To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold harmless County and its officers, agents, employees, volunteers, and 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 Consultant or its officers, agents, employees, volunteers, consultants and subconsultants in providing services under this Agreement, excluding, however, such liability, claims, actions, losses, injuries, damages or expenses to the extent arising from the active or sole negligence or willful misconduct 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.

**5.2 Design Professionals.** To the extent Consultant is providing the services of a “design professional” as defined in California Civil Code section 2782, County acknowledges that Consultant’s obligations under paragraph 5.1 may be limited under Civil Code Section 2782.8.

**5.3 Effect of Insurance.** The provisions of this Article are not limited by the requirements of Article IV related to insurance.

**5.4 Enforcement Costs.** Consultant shall reimburse any and all costs County incurs enforcing the indemnity, hold harmless, and defense provisions set forth in this Article.

**5.5 Survival.** This Article shall survive termination or expiration of this Agreement and continue in effect so long as a viable claim may exist.

## ARTICLE VI – MANDATORY COUNTY PROVISIONS

**6.1 Compliance with County Policies.** Consultant shall comply, and require its employees and subconsultants to comply, with the following policies, copies of which are available on County’s website at <https://www.countyofnapa.org/771/Purchasing> and are hereby incorporated by reference.

**6.1.1** Napa County “Waste Source Reduction and Recycled Product Content Procurement Policy,” which is found in the Napa County Policy Manual Part I, Section 8D.

**6.1.2** Napa County “Discrimination, Harassment and Retaliation Prevention Policy,” which is found in the Napa County Policy Manual Part I, Section 37K.

**6.1.3** Napa County “Drug and Alcohol Policy,” which is found in the Napa County Policy Manual Part I, Section 37O.

**6.1.4** “Napa County Information Technology Use and Security Policy” which is found in the Napa County Policy Manual Part I, Section 31A.

**6.1.5** Napa County “Workplace Violence Policy,” which is found in the Napa County Policy Manual Part I, Section 37U.

**6.2 Inducement of County Employees.** Consultant shall not permit its officers, agents, or employees to engage in any activities during the performance of any of services under this Agreement that would interfere with compliance or induce violation of these policies by County employees or consultants.

## **ARTICLE VII – COMPLIANCE WITH LAWS**

**7.1 Compliance with Controlling Law.** Consultant shall comply with all laws, ordinances, regulations, and policies of federal, California, and local governments applicable to this Agreement. Consultant shall comply immediately with all directives issued by County or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

**7.2 Conflict of Interest.** Consultant acknowledges that they are aware of the provisions of Government Code sections 1090, et seq., and sections 87100, et seq., relating to conflict of interest of public officers and employees. Consultant 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 the scope of services under this Agreement. Consultant further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. Violation of this paragraph by Consultant is a material breach of this Agreement which may result in termination of the Agreement for cause.

**7.3 Taxes.** Consultant shall file federal and state tax returns or applicable withholding documents and pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement. Consultant shall be solely liable and responsible to make such withholdings and pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. Consultant shall indemnify and hold County harmless from any liability it may incur to the United States or the State of California if Consultant fails to pay or withhold, when due, all such taxes and obligations. If County is audited for compliance regarding any withholding or other applicable taxes or amounts, Consultant shall furnish County with proof of payment of taxes or withholdings on those earnings within 10 business days after notice from County.

**7.4 Prevailing Wage Requirements.** The scope of services includes “public works” as defined in the California Labor Code. Consultant shall comply with all State prevailing wage requirements, including but not limited to, those set forth in Exhibit D.

## ARTICLE VIII – DISPUTE RESOLUTION

**8.1 Mandatory Non-binding Mediation.** If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation through Judicial Arbitration and Mediation Services (JAMS) or any other neutral organization agreed to by the parties. To initiate mediation, the initiating party shall send written notice of its request for mediation to the opposing party. Mediation is mandatory before either party may initiate litigation or have recourse in a court of law.

**8.2 Mediation Costs.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**8.3 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator may be selected from lists furnished by JAMS or any other agreed upon mediator. The parties shall endeavor to agree on a mediator within 10 business days, unless a longer period is mutually agreed to in writing by Consultant and County. If the parties cannot agree on a mediator, JAMS or other neutral organization shall select the mediator.

**8.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, or admissions will be confidential to the proceedings and will be subject to Evidence Code section 1152. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though County’s recommendation of settlement may be subject to the approval of the Board of Supervisors. Either party may have attorney(s), witnesses, or expert(s) present. Either party may request a list of witnesses and notification whether attorney(s) will be present.

**8.5 Mediation Results.** Any resultant agreements from mediation shall be documented in writing. Mediation results and documentation, by themselves, shall be “non-binding” and inadmissible for any purpose in any legal proceeding, unless such admission into evidence is otherwise agreed to in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their files and actions shall not be subject to discovery.

## ARTICLE IX – GENERAL PROVISIONS

**9.1 Access to Records/Retention.** Consultant shall provide County with access to Consultant’s records which are reasonably necessary for County to review or audit Consultant’s compliance with the provisions of this Agreement. Consultant shall provide such access within

10 business days after written request by County, either by providing copies of the requested records to County or allowing County to inspect and photocopy the records at Consultant's place of business where the records are kept. Consultant shall maintain all records related to this Agreement for at least four years after expiration or termination of this Agreement.

**9.2 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	CONSULTANT
David Shew, Fire Administrator	The Napa Communities Firewise Foundation
1195 3 <sup>rd</sup> Street – Ste. 310	PO Box 2336
Napa, CA 94559-3530	Napa, CA 94558

**9.3 Independent Contractors.** Consultant and its subconsultants, if any, are independent contractors and not agents of County. Any provisions of this Agreement that may appear to give County any right to direct Consultant concerning the details of performing the scope of services, or to exercise any control over such performance, shall mean only that Consultant shall follow the direction of County concerning the end results of the performance.

**9.4 Contract Interpretation.** This Agreement and all Contract Documents shall be deemed to be made under, and shall be construed in accordance with and governed by, the laws of the State of California without regard to the conflicts or choice of law provisions thereof. It is the intent of the Contract Documents to completely describe the goods and services to be provided. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be supplied whether or not specifically called for or identified in the Contract Documents. When words or phrases which have a well-known technical or industry or trade meaning are used to describe work, materials, equipment, goods, or services such words or phrases shall be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the order of precedence shall be in descending order as set forth below (the document in paragraph 9.4.1 having the highest precedence). Provisions of the Contract Documents addressing the same subject which are consistent but have different degrees of specificity shall not be considered to be in conflict, and the more specific language shall control. Order of Precedence:

- 9.4.1 This Agreement.
- 9.4.2 The Exhibits to this Agreement.
- 9.4.3 The RFQ or RFP issued by County.

9.4.4 Consultant's proposal or statement of qualifications.

**9.5 Drafting Ambiguities.** The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms, and conditions of this Agreement, and the decision of whether to seek advice of legal counsel with respect to this Agreement is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.

**9.6 Third Party Beneficiaries.** Unless expressly set forth in this Agreement, none of the provisions of this Agreement are intended to benefit any third party not specifically referenced herein. No person other than County and Consultant shall have the right to enforce any of the provisions of this Agreement.

**9.7 Force Majeure.** In the event either party's performance is delayed due to causes which are outside the control of both parties and their subconsultants, contractors and employees, and could not be avoided by the exercise of due care, which may include, but is not limited to, delays by regulating agencies, wars, floods, adverse weather conditions, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, fires, terrorism, incidence of disease or other illness that reaches outbreak, epidemic and/or pandemic proportions, unusual delay in deliveries, riots, civil commotion or other unavoidable casualties, and other acts of God, both parties will be entitled to an extension in their time for performance equivalent to the length of delay. Neither party will be entitled to compensation from the other for force majeure events. The party claiming its performance is delayed must demonstrate to the reasonable satisfaction of the other party that a force majeure event is causing the delay; the mere occurrence of a force majeure event is insufficient to extend the time for performance.

**9.8 Confidentiality of Services.** All services performed by Consultant and any subconsultants, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Consultant, are for the sole use of County. Neither the documents nor their contents shall be released by Consultant or any subconsultant to any third party without the prior written consent of County. Contractor shall not disclose records or other information provided by County under this Agreement to any third party, except as necessary to perform the scope of services, unless the records or information: (1) were publicly known, or otherwise known to Consultant, at the time it was disclosed to Consultant by County; (2) subsequently become publicly known through no act or omission of Consultant; or (3) otherwise become known to Consultant other than through disclosure by County.

**9.9 Insolvency.** Consultant shall notify County if Consultant enters into bankruptcy proceedings. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of County contract numbers and contracting offices for all County contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Agreement.

**9.10 Attorney's Fees.** If 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. This paragraph does not apply to attorney's fees or costs incurred during mediation.

**9.11 Venue.** This Agreement is made and entered into in Napa County, California. 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. 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 shall be in the Northern District of California.

**9.12 Exhibits Incorporated.** All Exhibits referenced in this Agreement are hereby incorporated into the Agreement by this reference.

**9.13 County Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of County as a subdivision of the State of California. Nothing in this Agreement shall be interpreted as limiting the rights and obligations of County in its governmental or regulatory capacity.

**9.14 Survival of Obligations.** All indemnifications, warranties, guarantees and other obligations that by their nature involve performance after the early termination or expiration of this Agreement or after completion and acceptance of the scope of services, shall survive the early termination or expiration of this Agreement. Such obligations include, but are not limited to, paragraphs 1.4 (Correction of Deficient Services), 9.1 (Access to Records/Retention), 9.8 (Confidentiality of Services), and Article VIII (Dispute Resolution). Obligations related to insurance or indemnity shall continue in full force and effect after the date of early termination or expiration, but only with regard to acts or omissions that occurred during the term of the Agreement.

**9.15 Severability.** Should any provision of this Agreement be held invalid or illegal by a court of competent jurisdiction, such invalidity or illegality shall not invalidate the whole of this Agreement, but rather, the Agreement shall be construed as if it did not contain the invalid or illegal provision, and the rights and obligations of the parties shall be construed and enforced accordingly, except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely impact either or both parties' consideration for entering into this Agreement.

**9.16 Amendment/Modification.** This Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of Consultant 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 compensation or contract time.

**9.17 No Waivers.** Any failure by either party to insist upon the strict performance by the other of any obligation of this Agreement, or any failure to exercise any right or remedy for a breach of any term or condition of this Agreement, shall not constitute a waiver of any such failure to perform or breach of any term or condition. A waiver must be express and in writing. 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.

**9.18 No Assignments.** Consultant may not assign the obligations under this Agreement, nor any monies due or to become due under this Agreement, without County's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Agreement at County's sole discretion. In no event shall any putative assignment create a contractual relationship between County and any putative assignee.

**9.19 Successors in Interest.** All rights and obligations created by this Agreement shall be in force and effect whether or not any parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any party's successor in interest.

**9.20 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.

**9.21 Counterparts.** This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

**9.22 Special Terms and Conditions.** CONTRACTOR shall adhere to the special terms and conditions set forth in Exhibit "E," attached hereto and incorporated by reference herein.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, this Agreement is executed by County, acting by and through the Chair of the Board of Supervisors, and by Consultant through its duly authorized officer(s).

THE NAPA COMMUNITIES FIREWISE FOUNDATION

By   
JOSEPH NORDLINGER, CEO

By Christopher Thompson  
CHRISTOPHER THOMPSON, Board Chair

“Consultant”

NAPA COUNTY, a political subdivision of  
the State of California

By \_\_\_\_\_  
ANNE COTTRELL, Chair of the Board of  
Supervisors

“County”

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Shana A Bagley</u> Deputy County Counsel</p> <p>Date: <u>February 26, 2025</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 SERVICES**

### **I. Description of Goods and/or Services**

Consultant shall provide project management and facilitate the Defensible Space and Ignition Resistant Construction (DS/IRC) project. The DS/IRC is a component of the 2022 Building Resilient Infrastructure and Communities (BRIC) grant awarded to the County of Napa. The grant aims to enhance community resilience to wildfires within Napa County by implementing defensible space strategies and ignition-resistant construction practices. Consultant will provide comprehensive project management services from the execution date until March 26, 2027, with the potential for a two-year extension based on project progress and needs. This role includes overseeing the project's operational aspects, conducting property assessments, and facilitating project implementation in collaboration with Napa County Fire Administration and other project stakeholders in accordance with Consultant's proposal dated JANUARY 17, 2025, which is hereby incorporated into this Exhibit by reference.

The Defensible Space/Ignition Resistant Construction project of the 2022 BRIC grant is aimed at developing parcel level wildfire resiliency in the form of defensible space development and updates to the property owner's home to make them more fire resilient. The program will be a cost share program where property owner may apply and qualify for DS and IRC Services to improve their home and property. The Consultant will be responsible for the implementation of this program through full management, property owner outreach and interaction, obtaining property right of entry agreements, property assessment, management of contractors to perform the work and appropriate filing of documentation for the cost recovery of this program.

The scope of work for the underlying individual property owner projects will vary based upon the needs and characteristics of each parcel and structures thereon and will be the subject of and defined in individual agreements with the property owners.

### **Project Oversight**

#### **Coordination with Stakeholders**

- Serve as the primary project liaison between Napa County Fire Administration, Dudek and Imprinta Inc., and other stakeholders as needed.
- Facilitate regular meetings and communications to ensure alignment with project objectives, grant requirements, and timelines.

#### **Schedule and Timeline Management**

- Develop and maintain a detailed project schedule, tracking all major milestones and deliverables.
- Monitor progress and provide regular status updates to the Napa County Fire Administration team, highlighting any deviations from the plan and suggesting corrective actions as needed.

## **Reporting and Documentation**

- Prepare and submit quarterly, and annual reports to document overall project progress, financial tracking, and resource allocation within the DS/IRC project. Report specifics and deliverables to be developed by Consultant with the Napa County Fire Administration.
- Maintain comprehensive records of project activities, communications, assessments, and approvals in compliance with BRIC requirements utilizing the selected grant management and assessment software.

## **Property Assessment**

After Right of Entry (ROE) is provided to Consultant, the Consultant and its partners will complete a property assessment and work with the property owner awardee to set areas of priority to align with the most appropriate and effective measures on their property to make it more wildfire resilient. In order for property owner awardees to receive any DS/IRC work, a contract will be signed between the property owner awardee, the DS/IRC Contractor/s providing the services and the County. The Consultant and its partners will help with preparing and reviewing the contract and will be subject matter experts on this type of project.

## **Property Evaluation**

- The Consultant may partner with Madronus Wildfire Defense and Wildfire Services Group to complete property evaluation and assessments.
- The Consultant and its partners will conduct assessments of designated properties to evaluate defensible space and ignition-resistant construction needs.
- The Consultant and its partners will utilize standard criteria of evaluation developed by the Napa County Fire Administration and BRIC teams, to assess vegetation management, construction materials, landscaping, and property layout in alignment with Napa County fire safety codes and BRIC objectives. Provide actionable recommendations to property owners on defensible space creation, ignition-resistant modifications, and ongoing maintenance practices via reports developed in the property assessment software.

## **Facilitation of Project Implementation**

### **Implementation Planning**

- The Consultant may partner with Dynamic Planning to develop and deploy the project management component with the grant.
- The Consultant and its partners should develop a strategic implementation plan for defensible space creation and ignition-resistant construction on approved properties.
- The Consultant and its partners should coordinate with contractors, vendors, and property owners to schedule and carry out project tasks, ensuring adherence to quality standards and timelines while following all Napa County required building, planning, and environmental requirements.
- The Consultant and its partners should manage contractors and ensure that all activities meet regulatory standards, including environmental and safety requirements, The

Consultant and its partners will ensure final inspections for all projects will be conducted by the County, as needed, before payment to DS/IRC Contractors can be released.

### **Collaboration Requirements**

The consultant will be required to collaborate closely with the following entities:

- Napa County Fire Administration - for guidance, regulatory support, and to ensure compliance with fire safety standards.
- Environmental Component Awardee - to ensure that all project activities align with environmental regulations and sustainability practices.
- Marketing and Outreach Component Awardee - to coordinate on public communication, educational materials, and community engagement strategies.

### **Performance and Deliverables**

The consultant will be responsible for the following deliverables:

- Quarterly Progress Reports - covering all activities, challenges, and updates on project milestones.
- Annual Performance Evaluations - detailing project impact, adherence to the project timeline, and budgetary insights.
- Final Project Report – at project completion - summarizing overall outcomes, challenges, and additional documentation that may be required for overall grant closeout. Consultant will work with grant compliance officers to provide appropriate documentation and backup for grant closeout.
- Compensation will be disbursed monthly based upon services actually provided and reimbursable expenses actually incurred as invoiced by the Consultant upon the satisfactory completion of deliverables and achievement of performance metrics. Invoices will be required to conform with the Napa County standard and backup submitted to include but not limited to employee timecards, mileage expense forms and invoices for any items charged to the project.

**EXHIBIT B  
COMPENSATION AND FEE SCHEDULE**

<b>1.0 Initiation: Establish Project Office and Complete Project Scoping</b>	<b>\$ 180,000.00</b>
1.1 Project Kickoff	\$ 30,000.00
1.2 Project Scope Plan Definition	\$ 115,000.00
1.3 Project Planning - Remaining Tenders	\$ 35,000.00
<b>2.0 Planning I: Pipeline Planning and Program Design</b>	<b>\$ 175,000.00</b>
2.1 - Customer Universe Definition	\$ 33,000.00
2.2 - Finalize messaging	\$ 29,000.00
2.3 - Finalize PEACE Portal requirements	\$ 26,000.00
2.4-2.6 - Requirements, Selections, tools, vendors	\$ 80,000.00
2.7 - Branding and Brand Measurement	\$ 7,000.00
<b>Task 3.0 Planning II - Program Lifecycle definition and County Nexus</b>	<b>\$170,000.00</b>
3.1 - Define Program Participant Lifecycle	\$ 65,000.00
3.2 - NC Nexus	\$ 30,000.00
3.3-3.8 - Define/Develop Program Participant Requirements	\$ 75,000.00
<b>Task 4.0 Execution</b>	<b>\$ 1,994,000.00</b>
4.1-4.5 - Delivery of assessments and Continuous Improvement	\$ 1,994,000.00
<b>Task 5.0 Monitor Measure Control - this work occurs in parallel to Tasks 1-6</b>	<b>\$ 234,000.00</b>
<b>Task 6.0 Close-out. This work occurs during the entire program with each project completed, each milestone completed and when the entire program is concluded.</b>	<b>\$ 183,000.00</b>
<b>Total Price</b>	<b>\$ 2,936,000.00</b>
<b>10% Contingency - Upon County Approval</b>	<b>\$ 293,600.00</b>
<b>Total</b>	<b>\$ 3,229,600.00</b>

Indirect costs may be billed at a 10% of Modified Total Direct Costs (MTDC). MTC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$50,000 of each subcontract. MTDC excludes equipment, capital expenditures, rental costs, and the portion of each subcontract in excess of \$50,000. Subcontractors will be billed based on actual invoice and overall contract is a not to exceed.



**The Napa Communities Firewise Foundation**

P.O. Box 2336 | Napa, CA 94558

<https://napafirewise.org>

<b>2025 Rate Sheet BRIC DS/IRC</b>	
<b>POSITION</b>	<b>HOURLY RATE</b>
<b>NCCF</b>	
Director of Wildfire Preparedness	\$185.00
Defensible Space Coordinator	\$100.00
Project Manager	\$125.00
Sr. Director of Vegetation Operations	\$215.00
Project Lead III	\$170.00
Project Lead II	\$155.00
Project Lead I	\$145.00
GIS/Data Analyst	\$110.00
Director of Corporate Services	\$185.00
Grants & Projects Analyst I	\$110.00
Grants & Projects Analyst II	\$125.00
Marketing Manager	\$125.00
Chief Executive Officer	\$225.00
<b>DYNAMIC PLANNING</b>	
Principle/Project Manager	\$170.00
Deputy Project Manager	\$125.00
<b>WUUI/WSG</b>	
Sr. Program Architect	\$160.00
Project Manager	\$140.00

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

**C.1 Workers Compensation Insurance.** To the extent required by law during the term of this Agreement, Consultant shall provide workers compensation insurance for the performance of any of Consultant's duties under this Agreement as required by the State of California with statutory limits, and employer's liability insurance with a limit of no less than TWO MILLION DOLLARS (\$2,000,000) per accident for bodily injury or disease, all with a waiver of subrogation. Consultant shall provide County with certification of all such coverages upon request by County's Risk Manager.

**C.2 Liability Insurance.** Consultant shall obtain and maintain in full force and effect during the term of this Agreement the following occurrence-based 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:

**C.2.1 General Liability.** Commercial general liability (CGL) insurance coverage (personal injury and property damage) of not less than TWO MILLION DOLLARS (\$2,000,000) 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 Consultant or any officer, agent, or employee of Consultant under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

**C.2.2 Professional Liability/Errors and Omissions.** Professional liability (or errors and omissions) insurance for all activities of Consultant arising out of or in connection with this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) per claim. If the coverage includes an aggregate limit the aggregate limit shall be no less than twice the per occurrence limit.

**C.2.3 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 Consultant'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 Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in paragraph C.2.1, above. If Consultant or Consultant's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, Consultant shall provide evidence of personal auto liability coverage for each such person upon request.

**C.3 Certificates of Coverage.** All insurance coverages referenced in paragraph C.2, 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 Consultant with the County Department administering this Agreement prior to commencement of the Scope of Services.

**C.3.1 Notice of Cancellation.** 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.

**C.3.2 Multiple Insureds.** The certificate(s) 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.

**C.3.3 Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in subparagraph C.2.1 and, for the comprehensive automobile liability insurance coverage referenced in subparagraph C.2.3 where the vehicles are covered by a commercial policy rather than a personal policy, Consultant shall also file with the evidence of coverage an endorsement from the insurance provider naming Napa County, its officers, employees, agents, and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, Consultant shall file an endorsement waiving subrogation with the evidence of coverage.

**C.3.4 Additional Requirements.** The certificate or other evidence of coverage shall provide that if the same policy applies to activities of Consultant 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 Consultant 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.

**C.4 Copies of Policies.** Upon request by County's Risk Manager, Consultant 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.

**C.5 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 Consultant 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 Consultant shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**EXHIBIT D**  
**CALIFORNIA PREVAILING WAGE REQUIREMENTS**

Pursuant to California Labor Code sections 1720 and 1771, construction, alteration, demolition, installation, repair and maintenance work performed under this Agreement is “public works” subject to State prevailing wage laws. State prevailing wage laws require certain provisions be included in all contracts for public works. Contractor and any subcontractors shall comply with State prevailing wage laws including but not limited to the requirements listed below.

**D.1 Payment of Prevailing Wages.** Contractor and all subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including but not limited to inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the post-construction phases of construction, including but not limited to all cleanup work at the jobsite.

**D.1.1** Copies of such prevailing rate of per diem wages are on file at the Napa County Public Works Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor and all subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

**D.1.2** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

**D.2 Penalties for Violations.** Contractor and all subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This is in addition to any other applicable penalties allowed under the California Labor Code.

**D.3 Payroll Records.** Contractor shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll

records, and making them available for inspection. Contractor shall require all subcontractors to also comply with section 1776 to the extent they are performing public works. Contractor and all subcontractors shall furnish records specified in section 1776 on a monthly basis directly to the Labor Commissioner in the manner required by California Labor Code section 1771.4. Contractor and all subcontractors shall also furnish the records to County at County's request. Contractor shall ensure its subconsultants and subcontractors prepare and submit payroll records to the DIR and County as required by this paragraph.

**D.3.1** If Contractor and any subcontractors are exempt from the DIR registration requirement pursuant to paragraph D.9.3 below, then Contractor and any subcontractors are not required to furnish payroll records directly to the Labor Commissioner but shall retain the records for at least three years after completion of the work, pursuant to California Labor Code section 1771.4(a)(4).

**D.3.2** County may require Contractor and its subcontractors to prepare and submit records specified in section 1776 to County and the Labor Commissioner on a weekly basis, at no additional cost to County.

**D.4 Apprentices.** Contractor and all subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices on public works projects. Contractor is responsible for compliance for all apprenticeable occupations pursuant to California Labor Code section 1777.5(n), and could be penalized for violations of its subcontractors pursuant to California Labor Code section 1777.7.

**D.5 Working Hours.** Contractor and all subcontractors shall comply with California Labor Code sections 1810 through 1815. Contractor and all subcontractors shall restrict the time of service of any worker on a public works project to eight hours during any one calendar day and forty hours during any one calendar week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay. Violations are subject to penalties of \$25 per worker per day pursuant to California Labor Code section 1813.

**D.6 Required Provisions for Subcontracts.** Contractor shall include, at a minimum, a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1813, and 1815.

**D.7 Labor Code Section 1861 Certification.** In accordance with California Labor Code section 3700, Contractor is required to secure the payment of compensation of its employees. By signing the Agreement to which this is an exhibit, Contractor certifies that:

“I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

**D.8 Compliance Monitoring and Enforcement.** This project is subject to compliance monitoring and enforcement by the DIR. County must withhold contract payments from Contractor as directed by the DIR, pursuant to California Labor Code section 1727.

**D.9 Registration Requirements.** Contractor and any subcontractors shall not engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5.

**D.9.1** By signing the Agreement to which this is an Exhibit, Contractor is certifying that it has verified that all subcontractors used on this project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5.

**D.9.2** County may ask Contractor for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this project at any time during performance of this Agreement, and Contractor shall provide the list within ten (10) working days of County's request.

**D.9.3** The registration requirement does not apply on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work, or on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work, pursuant to California Labor Code sections 1725.5(f) and 1771.1(n).

**D.10 Stop Order.** Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of California Labor Code sections 1725.5 or 1771.1, the Labor Commissioner must issue and serve a stop order prohibiting the use of the unregistered contractor or subcontractor on all public works until the unregistered contractor or subcontractor is registered. Failure to observe a stop order is a misdemeanor.

**EXHIBIT E  
SPECIAL PROVISIONS  
FEDERAL PROVISIONS**

**1. DEFINITIONS**

- A. Government** means the United States of America and any executive department or agency thereof.
- B. FEMA** means the Federal Emergency Management Agency.
- C. Third Party Subcontract** means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

**2. FEDERAL CHANGES**

- A.** Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Agreement, including but not limited to those requirements of 2 CFR 200.317 through 200.326 and more fully set forth in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, which is included herein by reference. Contractor's failure to so comply shall constitute a material breach of this contract.
- B.** The Contractor agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**3. ACCESS TO RECORDS**

- A.** The Contractor agrees to provide the County, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- B.** The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C.** The Contractor agrees to maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date County makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.
- D.** The requirements set for in paragraphs A, B, and C above are all in addition to, and should not be considered to be in lieu of, those requirements set forth in Section 21 of the Agreement.

#### **4. DEBARMENT AND SUSPENSION**

- A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" or on the USEPA's List of Violating Facilities. Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under executive Order 12549 or on the USEPA's List of Violating Facilities. Gov. Code § 4477.
- C. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. Contractor agrees to the provisions of Attachment 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Attachment 1, Contractor is the "prospective lower tier participant."
- D. The Contractor agrees to include paragraphs A and B above in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- E. This certification is a material representation of fact relied upon by County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of California, the County, and the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- F. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

#### **5. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- A. The County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to the County, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further

agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**6. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE** (applicable to all construction contracts awarded meeting the definition of “federally assisted construction contract” under 41 CFR 61-1.3)

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60). 41 CFR 60.14 is hereby incorporated by reference.

- A. Contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- B. Contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- D. Contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

**7. ANTI-KICKBACK ACT COMPLIANCE** (applicable to all contracts and subgrants for construction or repair; 44 CFR §13.36(i)(4))

Contractor agrees to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

**8. DAVIS-BACON ACT COMPLIANCE** (applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation;)

To the extent required by any Federal grant programs applicable to expected funding or reimbursement of County’s expenses incurred in connection with the services provided under this Agreement, Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) as set forth below. These requirements are in addition to the requirements set forth in Section 19(b) of the Agreement.

- A. The Contractor shall be bound to the provisions of the Davis-Bacon Act, and agrees to be bound by all the provisions of Labor Code section 1771 regarding prevailing wages. All labor on this project shall be paid neither less than the greater of the minimum wage

rates established by the U.S. Secretary of Labor (Federal Wage Rates), or by the State of California Director of Department of Industrial Relations (State Wage Rates). Current DIR requirements may be found at <http://www.dir.ca.gov/lcp.asp>.

- B. The general prevailing wage rates may be accessed at the Department of Labor Home Page at [www.sam.gov/search](http://www.sam.gov/search). Under the Davis Bacon heading, click on "Selecting DBA WDs." In the drop down menu for State, select, "California." In the drop down menu for County, select "Napa." In the drop down menu for Construction Type, make the appropriate selection. Then, click Search.

**9. CONTRACT WORK HOURS AND SAFETY STANDARDS** (applicable to all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, but not to purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence)

- A. **Compliance:** Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.
- B. **Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which they are employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- C. **Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for their unpaid wages. In additions, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of their standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. **Withholding for unpaid wages and liquidated damages:** The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.
- E. **Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

## **10. NOTICE OF REPORTING REQUIREMENTS**

- A.** Contractor acknowledges that it has read and understands the reporting requirements of FEMA in Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.
- B.** The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **11. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS**

- A.** Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:
  - 1) The copyright in any work developed with the assistance of funds provided under this Agreement;
  - 2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement.
- B.** The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **12. PATENT RIGHTS** (applicable to contracts for experimental, research, or development projects financed by FEMA; 44 CFR §13.36(i)(8))

- A.** General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA.
- B.** Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Contractor agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.
- C.** The Contractor agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

## **13. ENERGY CONSERVATION REQUIREMENTS**

- A.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).

- B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**14. CLEAN AIR AND WATER REQUIREMENTS** (applicable to all contracts and subcontracts in excess \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year)

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).
- B. Contractor agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.
- C. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**15. TERMINATION FOR CONVENIENCE OF COUNTY** (applicable to all contracts in excess of \$10,000)

See Paragraphs 10 and 11 of the Agreement.

**16. TERMINATION FOR DEFAULT** (applicable to all contracts in excess of \$10,000)

Contractor's failure to perform or observe any term, covenant or condition of this Agreement shall constitute an event of default under this Agreement. See Paragraphs 9 and 11 of the Agreement.

**17. CHANGES.**

See Paragraph 17 of the Agreement.

**18. LOBBYING (Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).)**

- A. Contractor shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. Contractor agrees to the provisions of Attachment 2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).
- C. Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **19. MBE / WBE REQUIREMENTS**

The County intends to seek reimbursement of its costs incurred in connection with this project from FEMA. Accordingly, the CONTRACTOR shall make every effort to procure Minority and Women's Business Enterprises ("DBEs") through the "Good Faith Effort" process as required in 2 CFR 200.321. Failure to perform the "Good Faith Effort" process and submit the forms listed below with the bid shall be cause for a bid to be rejected as non-responsive and/or be considered as a material breach of the contract.

### PRIME CONTRACTOR RESPONSIBILITIES

All recipients of this grant funding, as well as their prime contractors and subcontractors, must take all affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible, make every effort to solicit bids from eligible DBEs. This information must be documented and reported.

### "GOOD FAITH" EFFORT PROCESS

Any public or private entity receiving federal funds must demonstrate that efforts were made to attract MBE/WBEs. The process to attract MBE/WBEs is referred to as the "Good Faith" effort. This effort requires the recipient, prime contractor, and any subcontractors to take the steps listed below to assure that MBE/WBEs are used whenever possible as sources of supplies, construction, equipment, or services. If a CONTRACTOR fails to take the steps outlined below shall cause the bid to be rejected as non-responsive and/or be deemed a material breach of the contract.

- A. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- E. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
- F. If subcontracts are to be let, Contractor shall take the affirmative steps listed in 2 CFR 200.321.

## **20. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.323)**

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - 1) Competitively within a timeframe providing for compliance with the contract performance schedule;
  - 2) Meeting contract performance requirements; or
  - 3) At a reasonable price.

- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

**21. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS**

The preceding provisions include, in part, certain standard terms and conditions required by FEMA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FEMA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FEMA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests that would cause County to be in violation of the FEMA terms and conditions.

**22. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.**

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**23. DHS SEAL, LOGO, AND FLAGS.**

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**24. DOMESTIC PREFERENCES FOR PROCUREMENTS (2 CFR 200.322)**

As appropriate and to the extent consistent with law, contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**25. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (2 CFR 200.216)**

- (a) Contractor is prohibited from obligating or expending loan or grant funds to:
  - (1) Procure or obtain;
  - (2) Extend or renew a contract to procure or obtain; or
  - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
  
- (b) As described in Public Law 115-232, section 889, covered telecommunications equipment or services is any of the following:
  - (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - (2) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (3) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

## **ATTACHMENT 1**

### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)

As required by Executive Order 12549, Debarment and Suspension, as defined at 44 CFR Part 17, County may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. Contractor is required to sign the certification below which specifies that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that Contractor will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 44 CFR Part 17.

#### **Instruction for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

***Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions***

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principal is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

**ATTACHMENT 2**

**CERTIFICATION REGARDING LOBBYING**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of their knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

# Final FEMA BRIC DS&IRC Executed JN

Final Audit Report

2025-02-27

Created:	2025-02-27
By:	Phebe LaMar (elizabeth@napafirewise.org)
Status:	Signed
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-  Document e-signed by Joseph Nordlinger (jnordlinger@napafirewise.org)  
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