

NAPA COUNTY AGREEMENT NO. 260064B

**AGREEMENT BETWEEN NAPA SANITATION DISTRICT AND NAPA COUNTY
REGARDING THE ADJUSTMENT OF NAPA SANITATION UTILITY LIDS FOR
ROAD PAVING PROJECTS**

This Agreement ("Agreement") is entered into and effective as July 22, 2025, by and between Napa County, a political subdivision of the state of California ("COUNTY") and Napa Sanitation District, a California special district ("NAPASAN") (each a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, COUNTY plans to construct roadway improvements, including, but not limited to, paving repairs and related curb and utility adjustments for the new pavement for existing and future road paving projects (the "COUNTY PROJECTS"), as described in the COUNTY's contracting documents; and

WHEREAS, in those instances where a COUNTY PROJECT lists "Adjust Utility Covers to Grade" as an item in its Proposal Form and Contract Form, the COUNTY PROJECT will require adjustment of NAPASAN utilities prior to construction start and following paving completion, including work performed by COUNTY staff and its consultants ("WORK"); and

WHEREAS, NAPASAN has agreed to reimburse COUNTY for costs of the WORK; and

WHEREAS, the COUNTY will contract with contractors to perform the WORK ("CONTRACTORS"), and the COUNTY shall select and contract with such CONTRACTORS in accordance with all applicable public contract laws, including prevailing wage requirements; and

WHEREAS, the COUNTY's Board of Supervisors has or will approve the design of the reconstruction relating to the COUNTY PROJECTS including the WORK; and

WHEREAS, the Parties wish to memorialize the terms and conditions of NAPASAN's agreement to reimburse COUNTY for costs associated with the WORK described as "Adjust Utility Covers to Grade" in the project Proposal Form and Contract Form.

TERMS

NOW, THEREFORE, COUNTY and NAPASAN, for the mutual consideration described herein, agree as follows:

1. **Scope of Work Subject to Cost Sharing.** COUNTY shall cause its CONTRACTOR to perform all WORK for NAPASAN owned utilities, as described by line item “Adjust Utility Covers to Grade”.

- A. NAPASAN shall have the right to evaluate the project cost on a project-by-project basis and may elect, at its sole discretion, to perform the WORK described as “Adjust Utility Covers to Grade” itself, rather than have COUNTY’s CONTRACTOR perform such WORK. In such case, NAPASAN shall notify COUNTY in writing prior to bidding the CONTRACTOR work.

2. **Construction of the Project.**

- A. **Procurement.** COUNTY will conduct and be responsible for the procurement of all contracts associated with the construction of the WORK, including selecting and awarding the contract to the lowest responsive and responsible bidder for construction.
 - B. **Construction Management and Inspection.** All Parties shall be allowed access to the WORK area, subject to traffic controls and safety precautions during construction of the WORK for inspections during the progress of the WORK. COUNTY and NAPASAN shall coordinate a mutually acceptable date and time for joint inspections and *provided, further*, that COUNTY shall be responsible for all construction management oversight of the WORK.
 - C. **Notice of Completion.** COUNTY shall ensure that NAPASAN’s personal property is reasonably protected in place and operational (to the extent that COUNTY has control over such personal property) through the course of the WORK, ordinary wear and tear resulting from the WORK excepted. Prior to COUNTY accepting the work of the selected construction CONTRACTOR and/or filing a Notice of Completion, COUNTY shall allow NAPASAN ten (10) business days to inspect all WORK performed by CONTRACTOR. COUNTY shall not accept the CONTRACTOR’s work and file the Notice of Completion for the work until NAPASAN has informed the COUNTY that it accepts the WORK performed by CONTRACTOR or the ten (10) business day NAPASAN inspection period has expired. NAPASAN may reject the WORK for reasonable cause solely if the WORK does not materially conform with the description in the bid item listed as “Adjust Utility Covers to Grade”. In such case, the COUNTY will direct its CONTRACTOR to remediate any non-conforming WORK.
 - D. **Review and Standards.** The WORK shall be performed in accordance with NAPASAN’s requirements and standards. COUNTY shall provide NAPASAN with all relevant plans and specifications for the WORK for review and comment prior to bidding the CONTRACTOR work. COUNTY shall allow NAPASAN a maximum of ten (10) business days to review and provide comments. COUNTY shall incorporate NAPASAN’s comments to the extent reasonable and consistent with the intent of the COUNTY PROJECT.

- E. Facility Access. COUNTY shall provide NAPASAN with reasonable access to operate its facilities during the course of the WORK, subject to traffic control and safety precautions.

3. Project Cost, Payments, and Compensation.

- A. Responsibility for Cost of WORK. NAPASAN agrees to pay COUNTY for the actual cost of the WORK performed by COUNTY's CONTRACTOR, including the materials and labor costs for the WORK, in accordance with the terms of this Agreement and as described by "Adjust Utility Covers to Grade" in the project documents. This Agreement requires NAPASAN to pay the expenses as defined above in accordance with the procedures in this Section 3.
- B. Payment Upon Invoice. In accordance with Section 3(A) herein, NAPASAN shall reimburse COUNTY within sixty (60) calendar days of NAPASAN's receipt of an invoice from COUNTY for the WORK. COUNTY shall present invoices within thirty (30) calendar days following completion of work on a project-by-project basis and receipt of the CONTRACTOR's invoice for WORK.
- C. Damage Responsibility. NAPASAN shall not be responsible for the cost to repair or replace any NAPASAN facilities damaged by the COUNTY PROJECT, except for damages arising from the negligence or willful acts of NAPASAN or its officers, agents, employees, or volunteers.
- D. Spill Responsibility. NAPASAN shall not be responsible for costs associated with any sanitary sewer or recycled water spills that occur as a result of the COUNTY PROJECT, except for spills arising from the negligence or willful acts of NAPASAN or its officers, agents, employees, or volunteers.

4. Ownership, Maintenance and Operation of the Project.

- A. Ownership of the Project. Prior to COUNTY accepting the WORK of CONTRACTOR and/or filing a Notice of Completion, COUNTY shall address any close-out issues reasonably identified by NAPASAN that is consistent with the description of the WORK set forth in BID ITEM "Adjust Utility Covers to Grade" and once addressed, COUNTY shall request NAPASAN accept the improvements.
- B. Operation of the Project. Upon completion of the WORK, NAPASAN shall be responsible for all maintenance costs associated with utilities.

5. Access to Records / Document Retention. COUNTY will maintain documents relating to the WORK, including construction drawings and other information regarding the construction, for a period of no less than five (5) years following completion of the WORK, and provide all design and construction documents to NAPASAN in electronic format.

Financial records associated with the WORK, including payables records, receivable records and grants receivable records, shall be maintained by the Party owning such records for a period of no less than five (5) fiscal years after the completion of the WORK. NAPASAN or the duly authorized representatives of NAPASAN, shall have access to any books, documents, papers and records of COUNTY which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

6. **Term of this Agreement.** The term of this Agreement shall commence on the date first above written and shall continue in effect until either PARTY submits a written termination notice giving the other PARTY thirty (30) days written notice and when all payments for provided invoices have been made to COUNTY, unless earlier terminated pursuant to Section 18; except that the obligations of the PARTIES under Paragraphs 5 (Access to Records / Document Retention), 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of this Agreement.
7. **Insurance.** The COUNTY shall cause the CONTRACTORS to obtain and maintain in full force and effect throughout the term of this Agreement, the following insurance coverage and shall provide evidence of such coverage to NAPASAN upon request:
 - A. **Workers' Compensation Insurance.** Workers' compensation insurance for the performance of any of duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation against County.
 - B. **Liability Insurance.**
 - (1) **General Liability.** Commercial or comprehensive general liability 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 that Party under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.
 - (2) **Comprehensive Automobile Liability Insurance.** A comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with that PARTY's activities under this Agreement of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.
 - C. **Certificates of Coverage.** Insurance coverages referenced in 7(B), above, shall be evidenced by one or more certificates of coverage or, by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be available upon request.

(1) The certificate(s) or other evidence of coverage provided by the CONTRACTOR shall reference this Agreement by the COUNTY or NAPASAN number or title and department; shall be kept current during the term of this Agreement; shall provide that the COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(B)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(B)(2) where the vehicles are covered by a commercial policy rather than a personal policy, the CONTRACTOR shall also file with the evidence of coverage and endorsement from the insurance provider naming the COUNTY and NAPASAN, its officers, employees, agents and volunteers as well as the STATE of CALIFORNIA as additional insureds and waiving subrogation. For the Workers' Compensation insurance coverage, the CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of a Party not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of the other Party shall pertain only to liability for activities of the insured Party under this Agreement, and that the insurance provided is primary coverage with respect to any insurance or self-insurance programs maintained by the other Party. 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.

D. Inclusion in Subcontracts. COUNTY shall cause all contractors and subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the insurance requirements set forth in this Paragraph 7.

8. Indemnification.

A. By COUNTY. COUNTY shall defend, indemnify and hold harmless NAPASAN and the officers, agents and employees of NAPASAN from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property (collectively, "Liability"), arising out of or connected with COUNTY's negligent performance or material breach of its obligations under this Agreement.

- B. By NAPASAN. NAPASAN shall defend, indemnify and hold harmless COUNTY and the officers, agents and employees of COUNTY from any liability, arising out of or connected with NAPASAN's negligent performance or material breach of its obligations under this Agreement.
- C. 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, provided that nothing shall require either Party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.
9. **Ongoing Duties and Responsibilities.** In addition to the Parties' duties and responsibilities as described in other sections of this Agreement, the Parties acknowledge and agree to perform the following on an ongoing basis until the WORK is completed:
- A. Regular Staff Meetings. The respective staffs of COUNTY and NAPASAN and their retained consultants or contractors, will meet as needed to address matters contained in this Agreement.
- B. Commitment of Staff and Resources. COUNTY and NAPASAN will each provide sufficient staff and/or resources to this process to efficiently meet the goals and tasks set forth in this Agreement.
10. **Warranty of Legal Authority.** Each Party warrants and covenants that it has the present legal authority to enter into this Agreement and to perform the acts required of it hereunder. If any Party is found to lack the authority to perform the acts required of it hereunder or is prevented from performing the acts by a court of competent jurisdiction, this Agreement shall be void.
11. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.
12. **Attorneys' Fees.** In the event that either Party commences legal action of any kind or character to 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 attorneys' fees incurred in connection with such action.
13. **No Waiver.** The waiver by either Party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.
14. **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. 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. The Parties further agree to send supplemental notice by the email as identified below.

Napa Sanitation District:

Engineering Director
1515 Soscol Ferry Road
Napa, CA 94558
Email: MLEMMON@napasan.com; AELIAS@napasan.com

Napa County:

Director of Public Works
1195 Third Street, Suite 101
Napa, CA 94559
Email: steven.lederer@countyofnapa.org

Changes may be made to the addresses where notices are to be delivered by giving notice pursuant to this provision.

15. **Entire Agreement.** 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. amendment of this Agreement
16. **Amendment / Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing. In particular, only NAPASAN in the form of written authorization, may authorize extra and/or changed work if beyond the scope of adjusting utility covers to grade. Failure of COUNTY to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.
17. **Recitals Adopted.** The Parties hereby agree to and adopt the Agreement recitals as portions of this Agreement.
18. **Termination.** The termination shall be effective upon the filing of a Notice of Completion for the pending WORK and NAPASAN's payment to COUNTY of any amounts owed by NAPASAN hereunder. For purposes of this Section, "pending WORK" means any project that includes as part of its scope the WORK described as "Adjust Utility Covers to Grade" and has not yet filed a Notice of Completion for such project.

19. **Governing Law, Jurisdiction, and Venue.** The interpretation, validity, and enforcement of this Agreement will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement will be filed and heard in a court of competent jurisdiction in the County of Napa.
20. **Counterparts.** This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

[Remainder of page intentionally left blank. Signature page follows.]

21. **Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the COUNTY and NAPASAN.

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

COUNTY:

NAPA COUNTY, a political subdivision of the State of California

By: _____
ANNE COTTRELL, Chair
Board of Supervisors

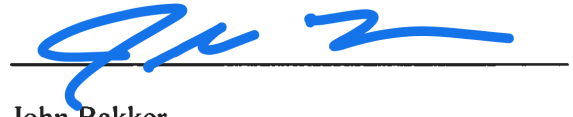
NAPA SANITATION DISTRICT, a
California special district

By: 
SCOTT SEDGLEY, Chair
Board of Directors

APPROVED AS TO FORM Office of County Counsel By: <u>Ryan FitzGerald (e-sign)</u> Deputy County Counsel Date: <u>May 28, 2025</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____
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APPROVED AS TO FORM:

By:



John Bakker

District Legal Counsel